

FOREIGN SHIPBUILDING SUBSIDIES

HEARING BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

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CONTENTS

Press release of Monday, March 4, 1991, announcing the hearing	Page 2
--	-----------

WITNESSES

Office of the U.S. Trade Representative, Hon. S. Linn Williams, Deputy U.S. Trade Representative	5
---	---

Shipbuilders Council of America, John J. Stocker, ...	22
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Ande Abbott.....	22

SUBMISSIONS FOR THE RECORD

American Federation of Labor and Congress of Industrial Organizations, Metal Trades Department, Paul J. Burnsky, statement	39
American Institute of Merchant Shipping, Ernest J. Corrado, statement	44
New Orleans Steamship Association, Channing F. Hayden, Jr., letter.....	49
Trunkline LNG Co.; and LACHMAR Partnership, Houston, Tex., L.B. Gatewood, joint statement.....	51
United Shipowners of America, statement	53
United States Great Lakes Association, Vera Paktor, letter	41
Virginia, Commonwealth of, Hon. Lawrence Douglas Wilder, Governor, letter .	42

FOREIGN SHIPBUILDING SUBSIDIES

THURSDAY, MARCH 21, 1991

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room B-318, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
MONDAY, MARCH 4, 1991

SUBCOMMITTEE ON TRADE #3
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
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THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN,
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON
FOREIGN SHIPBUILDING SUBSIDIES

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced a public hearing on the subject of foreign shipbuilding subsidies. The hearing will be held on Thursday, March 21, 1991, in room B-318 Rayburn House Office Building, beginning at 9:00 a.m.

The United States has taken a lead role in multilateral negotiations currently underway under the auspices of the Organization for Economic and Cooperative Development (OECD) to eliminate subsidies to the shipbuilding industry. These negotiations were initiated in mid-1989, upon the withdrawal of a petition filed by the Shipbuilders Council under section 301 of the Trade Act of 1974 challenging the subsidy practices of Japan, West Germany, Norway, and South Korea.

The purpose of the hearing is to review the objectives of the current negotiations on shipbuilding subsidies, and of progress to date in achieving those objectives. The Subcommittee is also interested in receiving views on whether any administrative or legislative action might be appropriate, if the negotiations fail to achieve certain objectives. A representative of the U.S. Trade Representative has been invited to testify at the hearing on behalf of the Administration.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler or Diane Kirkland [telephone (202) 225-1721] by close of business Wednesday, March 13, 1991. The telephone request should be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing.

(MORE)

- 2 -

All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statement to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any interested person or organization may file written comments for inclusion in the printed record of the hearing. Persons submitting written comments for the printed record should submit at least six (6) copies of their comments by the close of business Thursday, March 28, 1991, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statement distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, prior to the start of the public hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

* * * * *

Chairman GIBBONS. The subcommittee will come to order.

As everyone in the room knows, this is the Trade Subcommittee of the Ways and Means Committee, and our subject matter this morning is shipbuilding subsidies.

By way of background, there was a section 301 case filed in 1989 by the Shipbuilders Council of America, and it was withdrawn at the request of the USTR, with the promise that negotiations would go forward in that area. Negotiations were promptly begun, but we have run into some of the usual stonewalling.

The purpose of this hearing this morning is to determine the status of those negotiations, when we expect a satisfactory conclusion of them, and what, if anything, can the Congress do to help expedite these negotiations.

I want to say, on a personal basis, I am glad the shipbuilding industry of the United States is not here seeking subsidies, but is here seeking to prevent subsidies. It is something that the whole world must negotiate in or must participate in, if it is to be an effective embargo against subsidies, and if there is not some pretty quick action, we may have to take some unilateral action in this regard.

Without objection, the opening statement of Mr. Schulze will be placed in the record at this point.

[The opening statement follows:]

STATEMENT OF HON. DICK SCHULZE

Thank you Mr. Chairman. I commend you for holding this important hearing.

As you may know, I have witnessed first-hand the decline in the U.S. shipbuilding and repair industry. Pennsylvania Shipbuilding Co., in Chester, Pa., closed its gates in 1989. That shipyard's business base was principally commercial until the subsidy practices of Japan, Korea, and Europe forced the company out of that market in the early 1980s.

Unfortunately, the fate of Penn Ship will be shared by many other shipyards in the United States if the pervasive subsidy practices of our trading partners are not eliminated—and eliminated quickly!

U.S. shipyards have been extremely patient. They withdrew their section 301 trade petition—at the request of the U.S. Trade Representative—to allow the U.S. Government the time to negotiate a multilateral agreement to end subsidies.

After three missed deadlines, and almost 21 months of talk, foreign subsidies continue to flourish. In fact, Japan, Korea, and West Germany have planned, budgeted, or disbursed approximately \$4.5 billion in subsidies to their shipyards during these talks.

It is clear that our trading partners are not serious about these negotiations. It is evident that the United States is negotiating from a position of weakness, since subsidies were unilaterally terminated in this country in 1981.

The office of the U.S. Trade Representative disagrees with this assessment. USTR is optimistic that given more time an agreement will be reached. Yet, after 21 months, there is no agreement on when these subsidies will be eliminated. There is no agreement on a sanction for violators of the agreement. In fact, our trading partners have yet to provide to USTR a detailed list of their currently budgeted subsidy programs.

Progress, in my view, is a signed agreement which eliminates subsidies, and which includes a tough penalty for violators. That is progress—not an agreement for more talk!

I look forward to Ambassador Williams' testimony.

Chairman GIBBONS. Ambassador Williams, we welcome you here.

STATEMENT OF HON. S. LINN WILLIAMS, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ambassador WILLIAMS. Thank you very much, Mr. Chairman.

Mr. Chairman, I have prepared some remarks which I believe have been made available to the committee. I am pleased to read those, if the chairman wishes.

Chairman GIBBONS. If you would, because I have not had a chance to read those. I have read your speeches and I read some of your reports, but I have not read your remarks.

Ambassador WILLIAMS. In that case, I shall, otherwise I would have summarized them.

I am pleased to be here today to testify on our negotiations for an agreement to restrict subsidies and other distortions in the shipbuilding trade.

Although these negotiations have, as you pointed out, Mr. Chairman, taken longer than we had hoped or, frankly, expected, we believe there has been substantial progress. Indeed, in some areas the negotiations have produced very good results, which would push shipbuilding far beyond other industries in terms of restricting subsidies.

In other areas, however, our lack of result is especially disappointing. In all fairness, however, the matters that remain are difficult and politically charged for us, as well as for other countries, requiring a level of political will and commitment that still varies from country to country. Ultimately, the success of these negotiations will depend upon whether governments will make the necessary commitments.

Despite our serious and growing concerns about the passage of time, we remain convinced that these negotiations can provide a reasonable solution to a longstanding problem. The experience of U.S. shipbuilders led them to the same conclusion, and, although their frustration level is understandably increasing, we believe that the same conclusion should prevail, at least in the near term.

This effort was launched after a section 301 petition from the Shipbuilders Council of America (SCA). After discussions with us, the SCA agreed with us that its interests would best be served by a multilateral agreement, something along the lines of the steel consensus agreements we negotiated 18 months ago.

I should emphasize by clarification, Mr. Chairman, that we did not recommend to the SCA a multilateral solution out of foreign policy concerns or matters of that sort. We have not been afraid to apply section 301 in the past, and we shall not be afraid to do so in the future. Rather, our recommendation and the SCA's agreement was based on a solid, rational analysis of the commercial needs of the industry. We concluded then, and we continue to believe, that a multilateral solution is the only reasonable one for this industry. It is difficult to imagine that one or two countries would agree to reduce subsidies, when their competitors would not. At a minimum, one must question whether any such bilateral agreement on subsidies would have a lasting effect.

We have a great deal of sympathy for the position and the approach of the SCA. The SCA represents an industry that endured

traumatic shifts of fortune in the 1980s. In 1982, for its own reasons, the U.S. Government terminated its shipbuilding construction subsidies, as the administration sought to bring sectors of the economy more in line with market forces. At the same time, and somewhat unexpectedly, demand during the last half of the 1980s for new ships plummeted, as new orders fell to historic lows.

In about the same timeframe that the United States was eliminating construction subsidies for its shipbuilders, other countries that were members of the shipbuilding committee called Working Party Six of the OECD promulgated a resolution, called the Revised General Arrangement (RGA).

Most of the world's shipbuilders, I should note, are members of this Working Party Six. Korea has been an associate member since 1986. The United States was only an observer until 1989, but is now a full member.

The RGA was a good policy statement against the use of subsidies and, if it had been implemented, could have done much the same thing that this country did by itself. Unfortunately, other governments, when faced with declining demand, reacted by increasing subsidies or other forms of government intervention to protect their shipbuilding industries. In some cases, the subsidies were direct and substantial. In 1989, for example, some member states of the EC granted subsidies that were officially estimated to have been 26 percent of the value of the ships. In Japan, the Government organized selling cartels to minimize competition among Japanese shipbuilders. In other countries, the builders tried to win market share by selling their ships at prices below the cost of production. Failure to recover costs drove some shipbuilders to the brink of bankruptcy. In some cases, for example, Korea and Thailand, their Governments bailed them out with large grants, equity infusions, or other forms of assistance or market intervention. The varieties of these forms of assistance from governments absorbed shipbuilders' real costs and made competition in the shipbuilding industry completely artificial.

As a result of the combined forces of declining demand, foreign government assistance to its builders and no Government assistance to U.S. shipbuilders, no new contracts for commercial ships were won by U.S. shipbuilders after 1984. By contrast, they had produced about 719 ships, roughly 5 percent of the world's market, during the 1970s.

We believe, however, that the 1990s can and should be decidedly different. By most projections, demand for ships will be very different. For example, the number of orders for new ships bottomed out at 817 in 1987, and rose only moderately, to 1,016 in 1988. New orders rose dramatically, however, to 1,907 in 1990, with even higher projected estimates later in the decade. At the same time, more and more governments again recognized the folly of chasing one another's subsidies and unfair trading practices, to the benefit of a limited sector of the economy and the detriment of all their taxpayers.

For its part, the U.S. shipbuilding industry may be looking at a period of declining defense procurement, possibly resulting in the construction of fewer military ships. They have, to their credit, begun to focus their attention again on the commercial market. As

noted, they have good reason to look to the prospects of recovery from that commercial market, given the likely rising demand in the 1990s, if they are not faced with subsidized competition from abroad.

During the last year and a half, we have made progress in many respects in these negotiations. There are three major areas of negotiations, Mr. Chairman:

First, the text and what we have called "Annex I," which is a list of proscribed practices, this is the part of the negotiations that concerns coverage, important definitions, like the definition of subsidies, and dispute resolutions.

In this area, we have made substantial progress. Indeed, most of the text in Annex I has already been negotiated. Countries have accepted a comprehensive definition of what measures constitute barriers to trade, definitions of subsidies, and other important elements to any agreement. These disciplines cover all such acts, whether they exist in law or in fact, and, as such, the definitions that are included in this agreement extend well beyond any disciplines that currently exist in the GATT for trade in any item, not just in ships. In particular, signatories would agree to phase out all subsidies and other market distortions in accordance with a schedule, which is the subject of further negotiations.

In addition, countries have agreed to a binding arbitration mechanism to resolve disputes. We are pleased with this mechanism. Typically, as in these sorts of agreements, the dispute resolution requires that a country stop a practice prospectively. But very untypically, it also requires that any subsidies paid by a shipbuilder be repaid to the government. If that is not done, then trade sanctions are permitted. This is a very different form of dispute resolution and, again, much better than anything we have in any international agreement.

The second major area of negotiation concerns what has been called "unfair pricing." Many countries allege that, during the 1980s, shipbuilders in some countries sold at unfair prices, meaning basically, in this context, at less than the cost it took to make the ships.

Such imports, that is, imports at less than the cost of production, in most goods are subject to restrictions on unfair pricing, enforced through antidumping laws implemented in accordance with the GATT. Ships, however, are not considered to be "imported," because they sail from port to port. Therefore, they have not been subject to these dumping laws. We have had to develop in these negotiations a new and effective mechanism for dealing with the issue of unfair pricing of ships. Similarly, one might expect countervailing duty laws to apply, but for the same reason they do not.

We, and at this point all of the negotiating countries, have agreed in principle that unfair pricing should be covered in this agreement. Beyond that, however, there are some serious divisions over how we should do that.

"Unfair pricing" is a complicated issue, having potential implications for other sectors and for trade policy. The issue is sufficiently complex, that, in my estimate, it has by itself accounted for several months of the delays that we have encountered.

One proposal, which is no longer on the table, would have allowed a domestic shipbuilder to bring an action of unfair pricing for any sale not made in its domestic market or any other place. At one point, the proposal was even broader, that a shipbuilder could bring an action for unfair pricing for any sale in any market, including its own domestic market. These proposals were based on the proposition that the market for ships is global and, therefore, that any builder should have unrestricted access to challenge contracts in that "global" market.

The proposals, however, raise very serious policy concerns for us and for other countries. First, it substantially expands the idea of dumping to include alleged dumping in third-country markets. We do not think it is appropriate for the regulatory authorities of any country, including our own, to apply its own domestic dumping concepts outside sales into its domestic market. There are a number of other industries that can claim that their products are sold in a global market, including industries in which marginal costs of production for export sales do not vary as much as they do with ships. It would be extremely unwise, in our view, to set this precedent.

Second, we are concerned that such a mechanism to permit private contracts to be shaped or changed by assertions of unfair pricing could be converted into a mechanism for price-fixing, if it extends too far or becomes too intrusive.

We can support provisions on unfair pricing, but only insofar as they basically parallel the existing framework of GATT antidumping codes. In December, the chairman of the unfair pricing group, one of my negotiating staff, advanced such a draft compromise proposal, which followed the antidumping approach. The future of the negotiations on unfair pricing will depend on whether countries will be able to work with this approach or not. We expect to have an answer for that at the meetings that we have scheduled for mid-April.

The third area in the negotiations, called "Annex II," is how and when each country will phase out its subsidies and other practices.

Each of the participants has practices that have potential political and economic effects. For example, we have faced very strong criticism from other countries for our unwillingness to eliminate the domestic-build requirements of the Jones Act.

We have pointed out that the domestic-build requirements for U.S. cabotage trade involves a very small market, perhaps two or three ships a year. By contrast, we are prepared to consider opening up to foreign competition the domestic-build and repair requirements on vessels engaged in the U.S. subsidized foreign and U.S. preference cargo trades. We estimate that that market has a value of some \$10 billion over the next 10 years. It would be open to foreign competition, however, unless we are assured that other countries' markets are equally open.

The subsidies provided by our trading partners, by contrast, are very substantial. The SCA estimates that the EC, for example, has spent over \$2 billion in 1989 alone on shipbuilding subsidies. It should be noted, I suppose, that some of this has been spent on social payments for redundancies, which would be permitted by the agreement, in any event. However, they are still large numbers.

The Japanese and Korean Governments provide subsidies to ship-owners to purchase vessels, all of which were purchased by domestic suppliers, clearly subsidies to their domestic shipbuilding industries.

The participants in the negotiations have just begun to articulate and, in many cases, to formulate internally their approaches to these Annex II issues. That is not surprising, Mr. Chairman, for, as noted, these are very political issues here and elsewhere.

On the other hand, I do not want to minimize the task ahead. It is more than conceivable that we could reach agreement on the text of Annex I and even unfair pricing, and yet fail to reach a final agreement, because we were unable to conclude that the subsidies permitted by other countries were phased out sufficiently quickly, to allow our industry to compete effectively.

We had hoped that these negotiations would have ended by now. The fact that they have not ended, however, is not, we believe, an indication that our trading partners are not serious, that the negotiations are doomed to failure, or, most importantly, that we should abandon them ourselves now. There are several reasons for the delays. First, we frankly overestimated the political commitment of other countries to the RGA. It was a nice statement, but it was honored in the breach, rather than in the fact, and, therefore, we have found that it has been of very little benefit in these negotiations. Second, the issue of unfair pricing was just introduced into the negotiations last summer. It is, as noted, an extremely complex subject and has been responsible itself for much of the delay. Nevertheless, I emphasize that it is important and worth the time we have spent on it.

Finally, the politically difficult issues of Annex II were always expected to slow things down. On balance, the substance of these negotiations to date exceeds, in many respects, most, and in some respects many, multilateral negotiations on any other subject.

On balance, even the timing does not compare so unfavorably with other multilateral negotiations. That having been said, however, Mr. Chairman, we are very concerned about the passage of time. We do not think it helps these negotiations at all, to the contrary, and we are very much interested in resolving matters soon. The market is on an upturn now, and one of the reasons that the SCA has been pushing these negotiations and that we have joined them with such enthusiasm, is because we would like to see them have the opportunity to participate in that. The longer these negotiations take, the longer the phaseouts of subsidies are going to occur, the less likely that up-tick is.

In our own minds, we are now looking to the OECD ministerial in June as an opportunity to bless a completed agreement. We are strongly encouraging our trading partners to do the same and have the same timeframe in mind.

I should add that every country has shipowners, fishermen, labor unions and operators and other maritime interests, which would be vitally interested in any agreement that affected them. No country wants this agreement to impinge on those interests. We have succeeded in containing these discussions to shipbuilding and not allowing them to spill over into other maritime areas. Throughout these negotiations, however, we have kept shipowners and other in-

terests, as well as shipbuilders, informed of the objectives and status of our negotiations. The SCA has consistently supported our efforts, despite its own increasingly serious concerns about the passage of time. The other interest groups with which we have spoken—only yesterday with a group of shipowners—have been generally supportive.

In conclusion, Mr. Chairman, these have been long and difficult negotiations. They are, however, extremely important to us, to you in the Congress, and to industry, perhaps even more important to us, at least than when we started.

Although in some areas, the negotiations are converging towards a consensus, significant hurdles remain. We continue to believe, however, that a successful multilateral agreement, at a high standard of discipline—and I emphasize that last point—is our industry's best opportunity for gaining access to the growing demand for ships in foreign markets. We shall continue to work hard in support of that objective.

Chairman GIBBONS. Thank you, Mr. Ambassador.

First, let me commend you and your team for diligence in this matter. I realize that they are very difficult negotiations and, after having read some of your statements in the last few days, I have decided to pitch in and see what I could do to help.

I have said in my own mind that today, the first day of spring, is the day on which all subsidies are going to end effectively, as far as entry into the U.S. market is concerned. As soon as the staff gets a piece of legislation together for me, I intend to introduce it, probably right after the first of April, and have it retroactive to today, because I want to encourage these negotiations to go forward and to go forward very realistically and bring it to a conclusion. I think it is very important that we get it done.

There is a big market out there, we want to compete in it and we want to compete fairly in it, without Government subsidies. Our Government led the way in the early 1980s to get rid of shipbuilding subsidies, and I want to see us carry through with that.

Your next meeting is in April, is that right?

Ambassador WILLIAMS. Yes, Mr. Chairman. We have meetings scheduled, what are called expert group meetings, scheduled for mid-April, which will be followed by a principals' meeting. There will be a plenary meeting in May.

Chairman GIBBONS. I understand.

Ambassador WILLIAMS. The experts' group meeting and the principals' meeting will be extremely important.

If I could comment on the legislation for a moment, Mr. Chairman, we have seen some legislation. We have not seen anything that you might be contemplating now. We would be pleased to see it and discuss it with your staff.

Chairman GIBBONS. We would certainly do that with you.

Ambassador WILLIAMS. We share your frustrations a great deal. I think one of the things that we all want to be careful to do is to encourage the negotiations to proceed—until the time comes to give up on them. I do not see any point in any of us pretending that something is going to happen, when we have honestly concluded it will not. We are not at that point, though, Mr. Chairman, and we would want to work with you to make sure that anything that

is considered would help move the negotiations forward, rather than cause them to do otherwise.

Chairman GIBBONS. Well, that is my objective.

Mr. McGrath.

Mr. McGRATH. Thank you, Mr. Chairman.

Welcome, Mr. Ambassador. Mr. Ambassador, as you have pointed out in your testimony, we in 1981 unilaterally terminated subsidies to American shipyards and, conversely, foreign governments have not.

As a result, since 1981, about one-third of our yards have closed down, and 52,000 workers have lost their jobs in the industry. There are 21 shipyards in the New York area and there are 70 industry suppliers, and that makes this issue very, very close to my heart.

The chairman has indicated that he intends to submit some sort of a bill to do away with subsidies. However, you seem to indicate that you would like us to hold off a little bit.

There is a bill out there, H.R. 253, sponsored by Mrs. Bentley and Mr. Gaydos, that would eliminate foreign ship construction subsidies. It would do so by requiring that foreign shipyards repay its Government any subsidy received for construction or repair of a ship delivered on or before the date of the bill's enactment. If the shipyard fails to repay the subsidy to its own Government, a penalty in the amount of the subsidy would be levied on the ship before it can enter a New York port.

Now, let me pursue that. Isn't that basically the position that you have taken with respect to sanctions for violating an agreement that you are presently negotiating?

Ambassador WILLIAMS. It is a bit different at the tail-end. The sanction that we are promoting and that has something very close to consensus is the following: If there is a panel determination that an illegal subsidy has occurred—remember, we are looking for binding arbitration, which we now have agreement to—the first level of penalty would be the reimbursement of that subsidy by the shipbuilder to the Government.

If that is not done, if the Government does not require that be done, then other countries can compensate for that failure by the removal of GATT concessions. Those may or may not be on ships. In most instances, they would not be on ships, for legal reasons. They would be—

Mr. McGRATH. In other words, that is taking a position against products of the offending country, rather than the ship of the offending country, am I correct?

Ambassador WILLIAMS. That is correct.

Mr. McGRATH. Is that not essentially what the Europeans are proposing and somewhat diametrically opposed to what the position of this particular bill would be?

Ambassador WILLIAMS. It is what the Europeans have proposed and what we subscribe to in the agreement, and it is a reasonable thing to do, in the following sense.

In an international trade agreement, if somebody promises to do something and does not do it, you get compensated for it in some GATT concession. It would be up to each individual country to figure out what that is.

The concerns I think many countries have had in penalizing the ship—and I do not want to prejudge any response to any legislation, I consider this a discussion, not any position that the administration would take—are how do you find who owns the ship at the time, what does that kind of penalty do to the cost of shipping in this country, does it affect U.S. shipping interests in a way that we have tried to avoid, and is it subject to any international agreements. I am not prejudging any of those questions, but those are the questions.

Mr. McGRATH. Let me ask you, if the shipping industry in this country were to come out solidly behind penalizing the ship, as proposed in the bill, as opposed to the position taken by the Europeans and, seemingly, your negotiating stance at this point, would that be enough to convince you that that is perhaps the way we should go, as a nation, in this negotiation?

Ambassador WILLIAMS. I would still have to look at two things. First, if the shipowners took that position, then you would have been talking to different shipowners than I have been talking to over the last 12 months, including yesterday. In addition, I think we would still have to look at whether there are any international obligations at stake and what effect this might have on, in effect, innocent shippers.

Let me give you an example. Let us suppose that Germany subsidizes a ship, in violation of this agreement, and in order to get back at Germany, we want to impose a penalty on that ship. The German shipbuilder does not own it any more, it is owned by a Greek or an American or whoever, who seeks to bring the ship in. Is the imposition of the penalty on the Greek or the American an appropriate penalty or deterrent for behavior by a German Government or German shipbuilder? I am not prejudging the issue. The answer may ultimately be yes, but I have at least got to say we must ask that question and answer it honestly, before we support it.

Mr. McGRATH. I understand that, but it would seem that, in that same case, perhaps Germany would get the picture later on in their ability to sell ships, if these sanctions were imposed on the ships.

Let me get off that subject for just a second and ask you this: These negotiations have been going on for—at least the 301 cases were brought 20 months to 2 years ago, and you seem to suggest to the chairman that any legislation at this point perhaps would not be self-serving.

If we marked up this bill in this subcommittee, either the chairman's bill or Mrs. Bentley and Mr. Gaydos' bill, would that not present a little bit of impetus to you and your negotiating partners to get this thing done, sooner or later? Twenty months is an extraordinary length of time, even in the trade negotiation business, to accomplish this kind of seemingly an easy one, I think. Would it not be to give impetus to your position, to successfully conclude these negotiations?

Ambassador WILLIAMS. I think Congress—not just in these hearings, but at other times—has clearly demonstrated its interest in this matter and its willingness to take matters into its own hands, if it is unsatisfied with the result or the progress of what we have

done, and I really do not have any objection to that. It seems to me that you obviously have every bit as much right to fix this as we have to try to fix it, so Congress' interest is understood, appreciated and valued.

I think there are questions that have to be resolved, but I understand that ultimately Congress may consider a law that would impose a penalty on foreign ships. I think foreign governments understand that.

My point went to timing, and my question was whether the passage of that bill—I suppose in my own mind I did not distinguish between markups and passing it—whether the passage of that legislation or the serious endeavor to pass that legislation would be necessary in May, as contrasted to June or July. That is my only question to you, the—

Mr. McGRATH. I can understand your position, certainly. I do not think anybody here wants to micromanage your prerogatives as Ambassador, but I would hope that you could convey to your negotiating partners the frustration that many of us feel about the length of time that this particular negotiation has taken, particularly some of us who live in areas of big ports and have had at one time healthy shipyard businesses. To the extent that we can conclude this as expeditiously as possible, it would be very helpful.

Ambassador WILLIAMS. Thank you, Congressman, and we understand and honestly share your frustrations. I should also say I am aware of no prerogatives I have, as Ambassador, at least none that have been brought to my attention in the last couple of years, but we are doing our best, the only way we know how to make this work.

We understand and we hope our trading partners understand that at some point the other branch of Government will see fit to step in and make its own solution. We also realize we are close to that cusp. We understand that is what is happening, and we are doing the best we can to convey that to our trading partners, along with our own sense of urgency to this effort.

I think your frustration level is understandable, given the fact that the Shipbuilding Council, to its credit, has not come to you and asked for subsidies. They have asked for the classic "level playing field." They have asked other people to get rid of their subsidies, which we think is an honest and fair response that shows a great deal of integrity, and also commitment to commercial and market forces, which we would like to reinforce.

Mr. McGRATH. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Anthony.

Mr. ANTHONY. Thank you, Mr. Gibbons.

Ambassador Williams, you and Mr. Gibbons and Mr. McGrath probably do not know where the Port of Crossett is, you probably do not know what body of water it resides in, and I have a feeling that whether these ships are built with or without subsidies, they are not going to visit the Port of Crossett, but I am still interested in water transportation.

I wish you would tell me how the Government financing subsidy and the Government ownership of commercial shipbuilding yards, either in total or in part, is addressed in your negotiations.

Ambassador WILLIAMS. I should say I am from Oklahoma and we used to have to go down to Texas to see seawater, so I am used to it.

Mr. ANTHONY. Well, you had Senator Kerr and I had Senator McClellan, and now you have the Port of Tulsa. [Laughter.]

Ambassador WILLIAMS. That is true.

Mr. ANTHONY. They brought the port and then dug the river to it. [Laughter.]

Ambassador WILLIAMS. I remember it.

Your question has two parts to it, the export subsidy and Government involvement in the actual building of the ship.

Export subsidies are still a matter of negotiation, and there are some different views among governments, but we very strongly believe that governments should get out of the business of export financing. It strikes us as inherently silly to eliminate all subsidies other than export subsidies.

We have, therefore, been pushing for the prohibition of any government assistance which is subsidized. Governments could continue to provide guarantees, for example, as long as they charge market rates, but not subsidize those rates.

Mr. ANTHONY. So, you have financing on the table to try to eliminate it in an unfair way?

Ambassador WILLIAMS. Yes, sir, very much so, and it is extremely important to us, a very important issue.

Mr. ANTHONY. What about ownership?

Ambassador WILLIAMS. One more note on export financing. It is a little complicated by the fact that there is an OECD group, a separate group which handles export credit financing. The functional overlaps have somewhat complicated the abilities of some governments, not ours, to address the issue for ships and shipbuilding, but we have a very strong position on this and it is shared by other countries, as well.

Now, on government ownership, again, a controversial issue. Several countries, including the United States, take the position that the very fact that a government owns a shipyard makes it, at a minimum, difficult to determine whether a subsidy has been paid.

The issue is complicated by the fact that the European Community, in which there are few, but, state-owned shipyards, has in its Treaty of Rome, its basic constitutional document, a provision that privately-owned and State-owned enterprises will be treated the same.

The solution that has been proposed and discussed thus far would not require the privatization of shipyards, but would require that any payments made by governments to shipyards, whether state-owned or not, be at market rates. For example, an equity infusion into a state-owned shipyard would be judged by market standards.

While not ideal and still subject to negotiation in the agreement, that is a standard that we have applied in the past to countervailing duties.

If the shipyard is a stand-alone shipyard, that is, if the only assets it owns are shipbuilding assets, then it may not be so difficult to trace where the money goes, and, if there is an equity infu-

sion, balance that against an equity infusion in the same country to a private enterprise.

The problem is, if the shipbuilding entity is a subsidiary of a big state-owned operation, then tracking an equity infusion to the parent company, as it were, is hard. It is hard to find out whether that trickles down into the subsidiary.

So, it is an open issue, an issue of fundamental philosophical disagreement, I guess is the best way to say it, with the European Community, in particular. The middle ground that we are looking for is to impose private financial standards on state-owned enterprise. Once again, in defense of that, it is not new, we do it in other areas.

Mr. ANTHONY. Is a reciprocal U.S. financing program available to shipbuilders?

Ambassador WILLIAMS. For export finance?

Mr. ANTHONY. Yes.

Ambassador WILLIAMS. Yes, there is. The Export-Import Bank is prepared to finance the export of ships—

Mr. ANTHONY. Have they actually done any?

Ambassador WILLIAMS. No. In fact, there was an instance not so long ago in which, because of a misunderstanding, the Exim financing program was different from what the private company thought it would be, but I emphasize that my information—is that it was a genuine misunderstanding between the bank and the private companies.

So, the program exists, and so far as the administration is concerned, we are prepared to use it for ships. We would rather not. The idea of this is to get everybody out of the business.

Mr. ANTHONY. It is there and available, but no one has used it?

Ambassador WILLIAMS. Well, we have not had an opportunity to export a whole lot of ships in the past, so it has not been tested.

Mr. ANTHONY. Just because of market problems.

Ambassador WILLIAMS. Yes.

Mr. ANTHONY. On page 9 of your testimony, you mentioned the Jones Act and talked about the criticism that your negotiators mentioned to you about the Jones Act. What is your response? What do your negotiators say? What is the administration's position?

Ambassador WILLIAMS. We take the position that the Jones Act includes a limited number of ships. We further take the position that, because the economic effect of the Jones Act is modest, we are asking for special treatment of the Jones Act under this agreement.

Mr. ANTHONY. But what would be the special treatment?

Ambassador WILLIAMS. Special treatment is that we would not eliminate the domestic-build requirement of the Jones Act at all. We would be prepared to discuss the Jones Act orders that had come in at any particular time.

What I have done, Congressman, is the following: I have taken the position that we cannot change the domestic-build requirements of the Jones Act. Having done that, however, I have offered to make all Jones Act procurement as transparent as we can possibly make it. I have, therefore, commissioned and sent out to all of the other negotiators a study of Jones Act buildings in the last 10

years, and I have asked for a projection for Jones Act buildings for the next 10 years, and also sent that out.

My argument to our trading partners is, I am asking that the domestic-build requirement not be included, but I want to disclose to you fully what commercial effect I think this will have on your business operations. I have asked for the same consideration from those countries for their programs and have not received them.

Let me give you an example: The European Community, in its seventh directive, has substantially reduced the percentage of a given to build a ship, and, again, that is to their credit. It was politically difficult for them to do that.

The amount is 13 percent for large ships and 9 percent for small ships, but it is 13 percent of any ship; 13 percent of infinity is still infinity, and that 13 percent, if it continues, means that our companies will be unable to compete. If they miss this 10-year market, they will not be able to compete for whatever the next up-tick is, which may be 25 years away.

I am, therefore, arguing that my request for the Jones Act is not so commercially out of line with their phaseouts of their programs. The difference is, I am not agreeing to phase out the build requirement, whereas, they are agreeing to phase theirs out, and what I am trying to do is analyze the different economic effects, to prove to them that I am really not hurting them competitively, particularly by comparison to how their programs will affect us, even if phased out. But it would be less than honest for me to tell you that is not somewhat costly in a negotiation. Other countries will try to extract as much as they can from our inability to do anything at all with the domestic-build requirements of the Jones Act.

Mr. ANTHONY. Thank you, Mr. Ambassador.

Thank you, Mr. Chairman. I yield back.

Chairman GIBBONS. Mr. Matsui.

Mr. MATSUI. Thank you very much, Mr. Chairman.

Mr. Ambassador, I believe it was a couple of years ago when I spoke with some California shipbuilders about this problem, and I recall that they were either about to file, or had filed, a 301 complaint. Then, if you recall, in July of 1989, Ambassador Hills decided to get involved in direct negotiations with the countries that subsidize shipbuilding.

A period of 20 months has since passed, and although I agree with your statement that progress has been made, it looks like we are a ways from final resolution of the problem. The Japanese and Koreans still have not agreed to a definition of subsidies, the phaseout of those subsidies is still a problem, and sanctions that are to be imposed in the event that you get an agreement and there are violations of the agreement, have yet to be agreed upon. It would seem to me, for example, that the phaseout period issue should be one of the easier issues, but it is still obviously on the table. What we want is a 2- or 3-year period, and they want a 5-year period.

In any case, I would like to speak more generically than specifically for a moment. I remember from practicing law for 11 years in California that while you are negotiating with the opposing side, you also continue the court case. You get a trial date and continue legal action, particularly if you are a plaintiff, because otherwise

you take the pressure off the other side. In this case we are the aggrieved party.

It seems to me that we have lost 2 years and, in the meantime, the industry, in California in particular, is losing its shipbuilding base in this country. You know, it took this hearing, frankly, to get some focus on this issue.

I know you have been involved with the GATT negotiations, the North American Trade Agreement and other things—we just had the war, and so the President has been preoccupied—but the fact of the matter is that this problem has continued on and on and on, and I do not know when we are finally going to come to the conclusion that we should have reached a long time ago—that the only way we are going to get the Koreans, the Japanese, the Germans, and Norway to realize that we are serious about this issue is to start imposing some of the 301 sanctions.

I am afraid that we will have this hearing and then you are going to go back and everyone will sit around for another 6 months or more. Mr. Gibbons in the meantime will introduce his legislation, but even that will not provide a timely remedy.

One of the reasons we legislated the trade bill with 301 and 201 in it is so that these international issues can be handled administratively. I think that we have wasted a lot of time negotiating. I do not see that we have made any progress at all, frankly. You know, this is a prime example of why we should enact my Trade Agreements Compliance Act. You would not even need to talk about sanctions, if we had a generic method for dealing with the violation of trade agreements.

So, I would just like you to respond to that. I think we have lost a lot of time, and I know there is a lot of fluff in the testimony here, but the fact of the matter is that very little progress has been made.

Ambassador WILLIAMS. I do not consider the testimony to fluffy, nor do I consider the progress insubstantial. I do not want to minimize my concerns about the timing and our own regrets about it. After all, I am the guy who has got to do it. I am not happy to do this, and by our calculations, we have spent roughly \$1 million of the taxpayers' money, in one way or another, pursuing this, so it is not a matter of indifference to us, to the contrary.

Let me respond to two questions: First is on the progress. Everybody has agreed to a definition of subsidies. The problem with Japan and Korea is what is called home credits. Japan and Korea give money to ship buyers to buy ships. They say that should not be included in the agreement, because it is a payment to shipowners, not to shipbuilders, and we are only dealing with shipbuilders.

The problem, of course, is that in their programs nobody has ever bought a ship outside Japan or Korea, respectively, so we say it belongs on the list of subsidies to be phased out, and the Europeans say it belongs on, and it does belong on, there is no doubt about it, but that is not a fight over definitions.

Phasing is not easy. It is the most difficult thing to negotiate, because phasing is when you tell your constituencies that they are not going to get money any more. That was difficult for us, and it is going to be difficult for others.

While the sense of urgency is appropriate, I think we have to remember that, as the chairman pointed out at the very beginning, our guys have been out of the commercial market for a decade, and the negotiation of this agreement did not put them out of business. They got put out of business by markets and other subsidies—

Mr. MATSUI. Shall we just wait another decade? We could keep waiting. Because we waited a decade does not mean we want to wait another decade.

Ambassador WILLIAMS. No.

Mr. MATSUI. Let me just make another observation. In Ambassador Hills' press release of July 21, 1989, when she issued the statement that there had been a withdrawal or at least a suspension of the 301 petition, she said, "I will review our progress toward a multilateral agreement by March 31, 1990," a date which passed about a year ago. "If I believe, in consultation with the industry, that insufficient progress has been made in our negotiations, I will invite the shipbuilders to resubmit their petition and will initiate a section 302 investigation and dispute settlement proceedings under the GATT subsidies code." Has that been done?

Ambassador WILLIAMS. That has not, because we continue to believe that the—

Mr. MATSUI. Do you see what the problem is?

Ambassador WILLIAMS. Well, I see what your frustration is, but I do not want see the—

Mr. MATSUI. The Japanese and the Germans and the Koreans do not believe us any more.

Ambassador WILLIAMS. I do not think that is the case. Again, when you look at sanctions, 301, 201 or legislation, you have to start taking into account the interests of other industries that are going to be affected and—

Mr. MATSUI. Shall we repeal the section, then, because, obviously, every time someone files a 301 petition, other industries will be affected.

Ambassador WILLIAMS [continuing]. What we are trying to do is to help the shipbuilders by having an agreement that allows us to get all other shipbuilders to go along with this.

Now, if we get one or two, we do not help them. We need them all or most of them. The shipbuilders understood that 2 years ago, and they still understand it. Their problem is, they want it to go quicker. And so do we, but we are far enough along in this process that we think it is worth continuing to try to squeeze it out at the end.

If at some point we believe that we are not going to make progress, we'll say that. To give you an example, before the last negotiations, had there not been significant movement on unfair pricing, I would have declared these negotiations finished for us, because we would have no place to go with them.

I am still prepared to do that, if it looks like we are not going to do anything on critical issues, like unfair pricing or restructuring subsidies. But as long as we can get what everybody knew from the beginning was going to be the best result for the shipbuilders, which is a multilateral agreement, why should I shoot a hole in that boat?

Mr. MATSUI. I will tell you what the problem is, Ambassador Williams. Every time a deadline appears, they concede a little bit more, but you are never going to get the agreement, because they just keep making small concessions. Do you not understand that? You know, you should have Dan Rostenkowski negotiate for you; you would have had an agreement in 1990. I just cannot understand why you cannot figure out the mentality of the Japanese, the Germans, and the Koreans.

You know, right now, you are working on an agreement on semiconductors. Back in 1987, I remember, we negotiated for, and supposedly got, a guarantee for 20 percent market penetration in Japan. Our penetration in the Japanese market is actually 12 percent right now, and we are currently having to negotiate another agreement with them.

Generically, I think there is a fundamental problem in the way we are dealing with all of these problems. If you are reluctant to file a 301 petition, you are not going to get anywhere, I can just guarantee you that. In the meantime, we are going to lose some of the basic industries of this country.

Ambassador WILLIAMS. Well, I do not think we have been reluctant, Congressman. I am happy to have Chairman Rostenkowski do this, and I am sure he would be good at it, but I do not think our record has been too bad on 301's. Reasonable people can disagree about particular matters, but not about our commitment to use 301, impose sanctions and otherwise be tough with trade.

Mr. MATSUI. Let me just conclude by making one other observation. I know that the industry will work with you, just as the semiconductor industry is, but the problem is that the industry is afraid to take you guys on, and that is why we have to take you on. I will tell you, there are a lot of us that are pretty adamant about this, the semiconductors and a lot of other issues, as well.

You know, you guys start working with an industry, whether it is the high-tech industry in semiconductors or the shipbuilders, and they do not want to rock the boat, but the reality is, I can tell you, that they are not happy. They are not happy at all, and you ought to take that into consideration.

Ambassador WILLIAMS. I do, Congressman. Frankly, I have not noticed that they are afraid of us, and I am happy they are not. Let me reemphasize again: We have no hesitation to use 301 or sanctions. We are prepared to do it, we have done it, and we will do it again.

But when you do that, you always have to broaden the area of inquiry to include other industries. In the case of sanctions in shipbuilding, it is going to be shipowners. In the case of semiconductors, it is going to be computer users. Now, that is a bigger debate, a more complicated debate that pits one American industry against another. That is not to say it cannot be resolved, it is just not always the best way to fix these things.

Mr. MATSUI. Ambassador Williams, in terms of GNP, we are the largest country in the world. We will always have industries that are going to be competing with others every time we file a 301 complaint. Your statement basically tells foreign countries we will never file a 301 action. I cannot believe that.

Ambassador WILLIAMS. You should not believe it, because that is not what I said. I said at the beginning that we supported 301—

Mr. MATSUI. Well, that is the way I interpreted it.

Ambassador WILLIAMS. Well, you may interpret it that way, but that is not what I said. What I said was, we support 301 and we support the use of 301. Again, I will put our record up against anything you want to judge it against, and mine personally.

Mr. MATSUI. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Mr. Ambassador, it is good to see you. The chairman will be happy to hear that this is one issue where I do not have a constituent interest.

Chairman GIBBONS. You should get one.

Mr. PEASE. That is what I was going to say. We had a shipyard 8 years ago and it is gone and gone forever, so I have a little residual interest in the industry, even though in the case of my own district, shipbuilding is finished.

Mr. ANTHONY. Would the gentleman yield a moment?

Mr. PEASE. I would be happy to.

Mr. ANTHONY. Do you know where the Port of Crossett is?

Mr. PEASE. No.

Mr. ANTHONY. That is what I thought. [Laughter.]

Mr. PEASE. I got in late, so I will not ask any questions. But I am interested in the exchange you had, Ambassador Williams, with Mr. Matsui. Maybe you stated this before I came in, but when do you see this process ending, these negotiations ending?

Ambassador WILLIAMS. Well, it would have made my discussion with Congressman Matsui an awful lot easier on me, if I could give you an answer to that, Congressman, but I cannot.

What I will say is, I am prepared to declare these negotiations dead, if that is what I think they are. I was prepared to do that in February and am still prepared to do it in April. I have no interest in conducting negotiations that are dead. We shut one down in Airbus, for similar reasons.

I am looking to try to get a final agreement which can be approved by an OECD ministerial in June. It is a nice benchmark to use. Other countries have their own processes that they are working through. The Community, for example, has got member states to consult and a procedure it has to follow.

You try to measure the seriousness of the other side, to see whether it is worth continuing, and that is what I have tried to do. I continue to believe that the right decision has been made. I do not think a sanction imposed at an earlier time would have made any difference or helped the process.

That is not to say we should not do so later. Not only the threat of sanctions, but the imposition of sanctions, is critical to a trade policy. Ambassador Hills has said that, I say that, and that is the administration's position. It is simply a matter of time.

Mr. PEASE. Did I hear you say that you hope to have a final agreement by June of this year?

Ambassador WILLIAMS. That is my hope, Congressman, yes.

Mr. PEASE. How much longer after that are you prepared to wait before you decide that there is no point in going on?

Ambassador WILLIAMS. I can't tell you that, because I don't know what is going to come out by June. If we have got everything fixed except some relatively minor things, or something that requires a political decision to be taken by the middle of the June or the 1st of July, I just don't know what the situation is going to be. I wish I did.

Bilateral negotiations, where most of my time has been spent, are relatively clean. You make an argument, somebody responds. For multilateral negotiations, my metaphor is a lumpy pillow. You push one lump down and another lump comes up, you just sort of have to keep flattening it out.

There is no doubt that this negotiation has been complicated by the fact that it is multilateral. But if you stack it up against most other multilateral negotiations, the timing isn't unduly out of kilter.

This unfair pricing provision—you may have missed this—but there was a proposal by the Community—an appropriate one, I am not objecting to inserting unfair pricing—but that alone has cost us 6 months.

Now, how do I evaluate that time? What do I do with a deadline on something like that? We didn't count on that. It wasn't our proposal.

Mr. PEASE. Well, thank you, very much.

Mr. Chairman, I know that we have a vote on the House floor. I would just like, I guess, to echo my colleagues' frustration a bit. If the American shipowning industry is in difficult straits—you say it is out of the commercial shipbuilding market and has been for quite some time; we are about to enter a period of flat Pentagon budgets, declining Pentagon budgets over the next 5 years—one has to ask you, where are these shipyards going to get their business and how long can they hang on before they close and we lose that asset?

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you.

Mr. Ambassador, Mr. Schulze was here and I think he just went over to vote. Would you mind waiting here until he comes back in? He can inquire, if that is all right with you?

Ambassador WILLIAMS. I would be happy to.

Chairman GIBBONS. The rest of us will excuse ourselves. Because you may be gone when I come back, I just want to put forward my personal views. I feel that this is a very important negotiation, not only for shipbuilding but for other American industries as well. We are committed to doing away with subsidies. We have done away with most of our shipbuilding subsidies. I think the Congress is prepared to do away with the rest of them when we get some reciprocal action.

But unless we get some reciprocal action, and fast, we are going to move unilaterally in this area, and today is the effective date. The first day of spring, 1991, all subsidies stop as of this time. Subsidies stop or we are going to take unilateral action, here, in the Congress. I want that message to go out to the whole world. You don't pay a subsidy after today.

And, you know, we're going to follow through on it. I realize you have got a difficult job negotiating. I want to commend you for the

patience and skill that you have. But we are going to be in there helping you, right at your right elbow and your left elbow, pushing and shoving in this area.

If you just wait until Mr. Schulze gets back and let him inquire and start, we'll go over and vote and get right back.

Ambassador WILLIAMS. Sure.

[Recess.]

Chairman GIBBONS. Thank you, Mr. Williams, for very fine testimony.

Ambassador WILLIAMS. Thank you, sir.

Chairman GIBBONS. Our next witness is from the Shipbuilders Council of America, John J. Stocker. Mr. Stocker is coming to the table and others accompanying him. Mr. Stocker, you may proceed.

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA, ACCOMPANIED BY ANDE ABBOTT, DIRECTOR, LEGISLATIVE PROGRAMS, AND DIRECTOR, SHIPBUILDING AND MARINE DIVISION, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO

Mr. STOCKER. Mr. Chairman, thank you, very much.

My name is John J. Stocker. I am president of the Shipbuilders Council of America, which is the trade association that represents American shipbuilders, ship repairers and manufacturers of marine equipment. I would ask that my written statement be introduced into the record, and I would like to summarize it for you so that we can get on to the issues that concern you.

Chairman GIBBONS. All right, fine, without objection, it will be done.

Mr. STOCKER. Mr. Chairman, before I begin, let me comment on some of the issues that were raised earlier in the discussion with Ambassador Williams. First, on the issue of sanctions, particularly as it is outlined in proposed legislation that I know you have had a chance to look at, and also in H.R. 253, I have a few comments.

The U.S. Government's position and the position of the industry is essentially the same, particularly when it comes to the primary sanction—that is, that governments would ask their shipyards to repay the subsidies that have been provided to them. Where we differ is on the issue of secondary sanctions, and the legislation, that we have talked to you and others about, would, in fact, impose a fine or penalty on owners of vessels that had been built with subsidies. This is clearly consistent with U.S. domestic trade law, particularly in the area of countervailing duty practices.

Second, we already have a mechanism in the United States where the Federal Maritime Commission has the authority to impose fines and penalties on operators of ships that have benefited from unfair trade practices, although in our reading of the law, it is limited to ocean transportation services, rather than shipbuilding.

I might add that it was under your guidance and leadership, when the 1988 Trade Act was passed, that that particular provision was included, although the basis for the statutory language really goes back to section 19 of the 1920 Merchant Marine Act.

So clearly, past statutory practice has contemplated the use of these kinds of fines or penalties against owners who have benefited from the practices that injure this industry, the shipbuilding industry. I might also add that the legislation is prospective; that is, any particular ship that had been built with subsidy would be grandfathered as a result of the statutory action. I should add that in the case of U.S.-flag operators, only about 10 percent of the total fleet has ever been built or converted in foreign shipyards, so the impact on the U.S.-flag fleet would be minimal.

And, certainly, I don't think there is anyone in the U.S.-flag fleet that would be opposed to paying prices that are driven by market conditions rather than the clever activities of some governments.

I move on to the question of the Jones Act. Mr. Anthony asked some questions about the Jones Act. Certainly we concur in the view of Ambassador Williams that it is a minimal economic impact. I should also point out, most importantly, that while it is true that the Jones Act is a protected market, it is also a nonprice distorted market. In other words, we sell the ships for what it cost to produce them. We don't receive subsidy. We receive no payments of any kind for building ships for that domestic market.

I would also have to concur in the view that it has had a minimal economic impact on the industry. We have only seen three ships ordered in the last 7 years for that trade. And, frankly, given the land mass of the United States, water-borne commerce within the domestic market is going to always remain relatively limited to providing cargo services to Hawaii and Alaska, perhaps to Puerto Rico and also to carry petroleum products that are sent from Alaska to the lower 48.

So it is a minimal market, and we certainly support the U.S. Government position that it will not have a substantial impact on our colleagues in the international shipbuilding market.

I would also hasten to add that it is a protected market that extends beyond shipyards. It extends to operators, U.S.-flag operators who operate within that market, and it also extends to the labor unions who man those ships. So it is not an uncomplicated problem where you simply have a building industry that is safe and secure within this protected market. It has certainly done nothing to offset the decline that this industry has gone through.

The third, and final point I would like to bring up in regard to the issues that were raised earlier this morning has to do with the subject of export finance. While I certainly wouldn't disagree with anything that Ambassador Williams mentioned, regarding our ability to talk to the Export-Import Bank about supporting ship export sales, I would hasten to add that one of the things we have found to be true is, that while Exim certainly has a number of programs that could be beneficial to us, they do not have the capability to match the aid that is provided by a number of export-import banks around the world.

In this case, I am particularly talking about the very soft financing that some governments will engage in. Perhaps the most notorious of such aid is provided by the KfW, which is a bank of economic reconstruction in Germany. In the last 2 or 3 years they have been very willing to provide loans of 3 to 3.5 percent, in terms

of rate, for a 15-year term with the grace period on repayment as long as 3 years, if not longer.

So that is the sort of thing that we find ourselves competing against. Frankly, Exim is there to assist in export finance, but certainly doesn't have the capability to compete directly with that kind of an aid program.

Before I go on, Mr. Chairman, I would like to ensure that my colleague, to my left here, is introduced on the record, Ande Abbott, who is the director of legislative affairs with the Boilermakers Union.

Chairman GIBBONS. Yes, thank you.

Mr. STOCKER. I appreciate the fact that he is sitting with me, here, today, as a strong statement that this is an industrywide issue that affects not just management but more importantly it affects labor.

Let me take just a few moments to summarize my statement, Mr. Chairman. You know, 13 years ago our shipbuilding industry had a healthy backlog of ship work for both our military and commercial customers. In 1978, the industry had under contract 60 ships for commercial and 60 for our military customers; for a total of 120 vessels. Today, we are currently completing work on 96 Naval vessels and only three commercial ships are under construction; two of them frankly, quite small.

Our industry currently has a total employment of 129,300 employees which represents a decline of 57,400 since the peak employment of 186,700 was achieved in 1981. In other words, the private U.S. shipbuilding base has lost about one-third of its capacity since 1981.

The shift in the marketplace has been dramatic. While the decade of the 1980s was a period of rebuilding of America's naval forces, from which our shipyards clearly benefited, it was also a period in which commercial opportunities totally collapsed for U.S. builders. It meant that the industry became totally dependent on the U.S. Government for its livelihood.

In 1989, nearly 95 percent of our work load was for the Government. In fact, in the last 7 years, as I mentioned earlier, the industry has taken orders for only three new ships for commercial clients.

How did this turnaround occur in the fortunes of American shipyards? In 1981, the administration proposed the termination of construction differential subsidy program for the building of ships in the United States. This decision was made without considering the effect on U.S. shipyards, and without pursuing the elimination of foreign subsidy practices. In fact, we have been informed, Mr. Chairman, that there were officials at the Office of Management and Budget who thought it would make more sense to take advantage of foreign government subsidies and discounted the impact on American jobs.

The construction differential subsidy program was paid to U.S.-flag shipowners who also received subsidies for the ship's operation. The subsidy was paid so that U.S.-flag owners could, in fact, obtain their vessels at price parity with the world market. However, rarely did the program ever budget more than \$250 million in any given year. The subsidy practices—and in my statement I have

included a synopsis of the post-War history of shipbuilding worldwide—the subsidy practices became particularly acute during the 1980s when the worldwide industry went through a severe depression.

We have had the pleasure of obtaining some analysis prepared by a shipping economist who is based in London and has had considerable experience in viewing this market for some time. His name is Dr. Martin Stopford, and he has written the following:

The effort to balance demand and supply in the world shipbuilding market was complicated by three factors. The first, political expediency. Many of the yards were in towns that depended heavily on shipbuilding for employment and politicians were prepared to provide subsidies which enabled their local shipbuilders to avoid the massive capacity cuts which would have solved the problem quickly and cleanly.

Only in the United States did we go through that.

In Japan, there was the additional problem of the life-time employment system which ruled out redundancy as a means of reducing capacity.

Two, the expansion of the South Korean capability. In 1972, South Korea had started developing a major shipbuilding industry. Just as European and Japanese shipbuilders were starting to cut their capacity, Hyundai, the first of the new Korean yards came into production. The timing of the Korean entry into the market could not have been worse and their new capacity offset the capacity cuts in the traditional shipbuilding areas, especially in Western Europe and the United States.

Three, there was a failure to anticipate the severity of the crisis. Since the scale of the problem was not fully appreciated at the outset, instead of tackling the capacity reduction with a single clean cut, most shipbuilders tackled restructuring as a series of steps down, interspersed with periods of consolidation, during which each shipyard sought to maintain its market share at the expense of others by means of price-cutting * * *

Let me emphasize that—

* * * by means of price-cutting backed by subsidy.

Meanwhile, in the United States, as I mentioned earlier, our response to the worldwide struggle for market share was to see the termination of our own subsidy program. And, while it was true that our commercial orders in the 1970s were largely targeted to the domestic market, it is also true that during the period of time when we had subsidies in the United States we were able to maintain a healthy mix of commercial and naval contracts.

The Government's response, however, to this situation was counterproductive. Just when subsidies began to grow, our subsidies were terminated. Two other countries, Sweden and Canada, reduced their subsidies programs, although they were not terminated completely. The results in all three countries have been essentially the same: decline or collapse of their commercial shipbuilding capability. In fact, the Secretary General of the GATT has been quoted as saying in the past, "that the most heavily distorted industrial sector is that of shipbuilding." It is very clear that there is a very close correlation between ship orders and the amount of subsidies that governments are willing to give.

For American shipyards, the period of the 1980s was marked by growth in the naval sector. So, while there were concerns about the lack of commercial shipbuilding, for many in Government, and frankly in industry as well, the number of naval contracts minimized the impact of subsidy termination. However, 2½ years ago, the Shipbuilders Council of America made it clear to its members

that a downturn in defense spending was approaching; a downturn generated by the changing international threat environment. For an industry totally dependent on the U.S. Government for its work, such a structural budgetary change could be catastrophic. To survive we had to turn to the commercial market.

Starting in 1988, the world shipbuilding market began to recover from its period of massive depression. The fleet was aging, there were concerns about the safe operation of ships in the ocean environment, and there were technological improvements in ship systems performance, including propulsion plants, that would improve the quality of ocean shipping services. Thus, it was possible to foresee that the 1990s could be a period of profound growth in shipbuilding demand, as Ambassador Williams has noted earlier.

Aiding the process was the fact that worldwide capacity had declined. World shipbuilding capacity had dropped by about 40 percent. In 1990, demand began to accelerate, with worldwide production 25 percent higher than it had been in 1989. While forecasters are in continuous debate about the extent of this demand growth, even conservative estimates now show that it will reach a peak of nearly 60 million deadweight tons by the end of the decade, or more than three times the current levels.

Despite this growth demand, American shipyards will not have an opportunity to capture a share of this market if foreign governments continue to rely on subsidies to underwrite ship prices. Subsidy programs are of great importance to foreign shipbuilders since there is a strong correlation, as I mentioned earlier, between levels of subsidy support and the size of the order book.

For example, in Japan, at the end of 1990 the order book stood at 558 ships, totaling 29.9 million deadweight tons. This workload supported a 41 percent market share for Japan in tonnage and a 29-percent share in ship numbers. By the way, I don't know what a definition of monopoly situations are in a market, but that probably approaches it.

This backlog results not only from Japanese shipyard performance, which admittedly is very good, but also from the \$4.4 billion in subsidy support provided by the Japanese Government in the period 1987 through 1990.

In Korea, Government support programs totaled nearly \$2.2 billion in 1989 through 1990. And while Ambassador Williams mentioned a figure of \$2 billion in a single year in the EEC, I should point out that the German Government, alone, provided over \$5 billion in support from 1987 through 1990. By comparison, members of the committee, Mr. Chairman, the U.S. Government provided \$4.6 million, which frankly went to a joint government-industry program to improve the shipbuilding production process through the National Shipbuilding Research Program. That probably explains why we are only building three ships today.

Recognizing that subsidies were a major impediment to the re-entry of the American shipyards into the marketplace, the Council filed a 301 petition against Japan, Korea, Germany, and Norway—you know that background—in the summer of 1989. We asked the U.S. Trade Representative to take unilateral action against those countries for their pervasive subsidy practices in an international

shipbuilding market, where American shipyards were essentially denied entry.

After 6 weeks of review, the USTR reached the conclusion that American shipyard plans to reenter the marketplace were being effectively denied. We were asked to withdraw our petition, which we did with some reluctance, but we did so because of a feeling that we had that the U.S. Government was making a commitment to reach an agreement with our trading partners by March 31, 1990.

In fact, Ambassador Hills made it clear to me, that in her discussions with the Ambassadors of the countries targeted, they all made a solemn vow that their governments were just as interested in subsidy discipline as the United States was. I think the events of the last 21 months have shown that to be incorrect.

During the summer and fall of 1989, the U.S. Trade Representative's office formed an interagency team to begin work on the shipbuilding negotiations. They moved aggressively to compile the data and a strategy needed to make these negotiations a success. We have worked closely with them throughout this process.

And I have to admit that initially some progress was made. However, progress was slowed down—as Ambassador Williams has noted—when the Europeans brought the issue of unfair pricing to the table. Why did they do this? It was done largely because of the fact that the Japanese and the Koreans have had a consistent practice of underpricing their ships in order to drive out competition and secure market share.

Recent statements by spokesmen for both industries—and we have the written testimony—have acknowledged that their underpricing practices did exist for the last 15 years, and have vowed that they will not be repeated.

But the damage had been done. Two successive deadlines have been missed and we now stand, 21 months later, with the market continuing to evolve, just as the forecasters have predicted, Mr. Chairman, and continuing to deny access to the market for American shipyards.

In fact, Mr. Chairman, what really outrages us is that in the 21 months that this has been going on, our colleagues in Japan, Korea, and Germany have budgeted, dispersed or proposed \$4.5 billion in new shipbuilding subsidies. Altogether since 1987, these countries have proposed or budgeted more than \$12 billion in commercial shipbuilding-related aid, of which over \$9 billion has been provided in cash, loans, guarantees and other assistance.

Now, the subsidies have come in the form of direct grants, export credits, restructuring or investment aid, home credits, and research and development assistance. Thus, during the period of negotiation, our trading partners continue to subsidize, and they continue to take work away from American shipyards.

Mr. Chairman, our industry stands now at a crossroads. We have always supported the concept of negotiated trade agreement, disciplining subsidy practices. We have agreed—and this is very important—we have agreed that any statutory provision that currently protects U.S. shipyards in the commercial market should be repealed to make our laws and regulations consistent with the multilateral trade agreement, even though these provisions have amounted to very little in the way of providing business to us.

It is apparent to all sides, that we gave our leverage away unilaterally in 1981, without taking this issue up at that time.

We have always held, Mr. Chairman, that an international agreement has to have the following elements. One, the penalties imposed under such an agreement should be tough and meaningful. The agreement should require repayment of the subsidy by the shipbuilding/repair company to its government. Although I have to add, we are going to watch this situation very carefully. The EEC has a similar provision and the European Commission has been singularly unsuccessful in getting member states to, in fact, repay the subsidy. If it doesn't work in the European Community, we have our concerns about whether or not it would work under this particular agreement.

That is why the secondary sanction is so important. If the signatories fail to recover the subsidy, we have the right to fine ship-owners, not just in the United States, but worldwide, certainly in terms of all the signatories who sign the agreement.

Two, since the Koreans and the Japanese have admitted that they have engaged in noncompensatory pricing practices in the 1980s, we agree with the Europeans that an unfair pricing mechanism is needed, and it should be a good one and one that would allow us to file cases under it.

Three, the U.S. Government is the only member of the OECD that has clearly identified which of our specific programs would be terminated under this agreement. No other government has provided such a list. Specific, as well as generic, programs must be identified in the annex that will cover the phaseout.

And, four, the Europeans are not in a hurry to phase out their programs. The U.S. industry began the process, urging a 2-year phaseout based on a start date of December 31, 1991. Obviously that timetable will be missed. The European Commission, in a very cynical fashion, has already introduced a Seventh Directive on Shipbuilding, which encompasses a 3-year plan on state aids. We absolutely agree with Ambassador Williams that while the ceiling has been reduced to 13 percent, there is no cap on spending.

Frankly, Mr. Chairman, Europeans, as in other areas, are not serious about a subsidy discipline. They not only want a long phase-out of existing practices, but they are also uninterested in capping spending on European state assistance. The welfare state lives on. Without a strong, well-articulated, and quick phaseout the Europeans hope to continue to deny United States access to the world shipbuilding market.

After 21 months of negotiations, we still do not have an agreement that disciplines subsidy practices. How much longer must we wait? Yet, when we ask the administration to undertake unilateral action they appear to be unwilling to use the trade instruments available to it. Despite the fact that we deeply appreciate the efforts undertaken by the USTR staff, we fear that the other side ultimately believes that the administration will do nothing.

As a result, the U.S. shipbuilding and repair industry believes that our trading partners fear only the political will of the American people, as embodied in this Congress. We believe that now is the time to send a strong message to our trading partners that the days are over when the United States ignores its own economic in-

terest, while we maintain international security so that other economies may flourish.

The U.S. shipbuilding and repair industry asks this subcommittee and the Congress to consider the passage of legislation that will generate the results we are all looking for—that is a fair chance for U.S. shipbuilding and repair yards to meet future market demand.

Such legislation will allow the U.S. Government to calculate the economic benefit of subsidy practices and to seek foreign government collection and repayment of the subsidy by the foreign shipyard. Failing repayment, it would allow the United States to fine or penalize those owners who accept delivery of a ship that is illegally subsidized.

We believe that after more than 21 months of the trade talks, our trade competitors have made it clear that they are unwilling to end their subsidy practices through multilateral negotiations. They are unwilling to end their subsidies because they do not perceive that such an action is in their best interest. The elimination of shipbuilding subsidies will only be achieved when the U.S. Congress provides them with an incentive to do so.

While we appreciate the USTR's efforts on behalf of our industry, we also have to say that the USTR's definition of progress in the trade talks is not the same as ours. The fact that our trading competitors are willing to participate in meeting, after meeting, after meeting, and have not refused yet another meeting, does not represent progress to us. While these meetings go on ad infinitum, our industry continues to be locked out of the international market by foreign shipbuilding subsidies that are allowed to remain in place.

Mr. Chairman, we have watched our industry lose 60,000 jobs to a foreign shipbuilding and repair industry that has been propped up and force-fed subsidies that have distorted and very nearly destroyed the marketplace. These subsidies have led to overproduction, artificial depression of prices, and a severe imbalance between demand and supply.

Now that we face a downturn in defense spending in the United States, necessitated by the change in international events, we need to be given a chance to compete fairly in that market. We are not asking for subsidies for ourselves, we are simply asking that our Government support us in our efforts to open up the world market and lead to the export of ships that are built and repaired by Americans.

Thank you, very much, Mr. Chairman.

[The prepared statement follows:]

Statement By
John J. Stocker, President
Shipbuilders Council of America
Before
Subcommittee on Trade
Committee on Ways and Means
On Foreign Shipbuilding and Repair Subsidy Practices
March 21, 1991

Mr. Chairman and Members of the Trade Subcommittee, my name is John J. Stocker and I am President of the Shipbuilders Council of America. The Council is the national trade association representing American shipbuilders, ship repairers, and manufacturers of marine equipment. Our mission is to speak out on issues of importance to the shipbuilding/repair industry. The subject of today's hearing, the negotiations to eliminate foreign shipbuilding and repair subsidy practices, is central to the desire of American shipyards to produce for the international market.

Thirteen years ago, our shipbuilding industry had a healthy backlog of ship work for both our military and commercial customers. In 1978, the industry had under contract 60 ships for commercial customers and 60 ships for the U.S. Navy for a total of 120 ships. Today, the U.S. shipbuilding industry has 96 naval vessels and only three commercial ships under construction. Our industry has 129,300 employees, which represents a decline of 57,400 since the peak employment of 186,700 was achieved in 1981. In other words, the private U.S. shipyards have lost about one third of its capacity since 1981.

The shift in the marketplace for U.S. shipyards was dramatic. While the decade of the 1980s was a period of rebuilding of America's naval forces--from which our shipyards benefitted--it was also a period in which commercial opportunities totally collapsed for U.S. builders. This industry went from one that was dependent on U.S. Government contracts for about one third of its workload in the mid-1970s to one that became almost totally dependent on the U.S. Government for its livelihood. In 1989, nearly 95 percent of the industry's workload was for the Government. In fact, in the last seven years, the industry has taken orders for only three new ships for commercial clients.

How did this incredible turnaround occur in the fortunes of American shipyards? In 1981, the Administration proposed the termination of the Construction-Differential Subsidy (CDS) for the building of ships in the United States. This decision was made without considering the effect on U.S. shipyards and without pursuing the elimination of foreign subsidy practices.

The Construction-Differential Subsidy was paid to U.S.-flag shipowners, who also received subsidies for the ship's operation. The subsidy was paid so that U.S.-flag owners could obtain their vessels at price parity with the world market. Rarely, however, did the U.S. Government need to budget more than \$250 million in any given year for the program.

While it is true that throughout the 1970s the program built ships in American shipyards, it is also true that it basically tied American shipyards to the domestic market. We never received export subsidy and, as a result, ship production in the United States became, in effect, a response to market demand driven by a relatively small fleet (by world standards). As a result, we built custom-designed ships for our domestic customers and never were able to institute the standardized production that we, in fact, developed during World War II and eventually transferred to Japan.

The Construction-Differential Subsidy program had been in existence since the passage of the Merchant Marine Act of 1936. The 1936 Act really financed the rebirth of American shipbuilding, which at that time was emerging from the chaos of the Great Depression. American shipyards began taking new orders again as a result of the Act, and built a number of cargo and naval vessels that were utilized in World War II. The rebuilding of American shipyards in the late 1930s made it possible for American shipyards to respond to the mobilization demands of the War. During World War II, American yards produced 5,063 cargo

ships and 1,556 naval vessels. By the end of the war, we were the world's leading producer of ships.

Obviously, with all that wartime production, there was a surplus of shipping in the post war period. American yards downsized to meet reduced demand. But, even in the late 1950s, American shipyards were still healthy enough that ships were being built for domestic and export customers.

In the 1960s, however, the world's shipbuilders began to see the emergence of a new challenge--that of Japan. The Japanese, heavily dependent on ocean transportation, had decided that shipbuilding offered a way for them to control ocean freight rates so that both imports and exports would bear lowered transportation costs. This could be done through an effective market control of the shipbuilding market and its ability to price shipping's chief capital asset--the ship. In addition, shipbuilding offered them an opportunity to develop their industrial base.

Investment in new capital plant, equipment, and training began. By the end of the 1960s, the Japanese were becoming a force in the world market while at the same time, interventionist policies of the Japanese Government were taking hold in the marketplace. Not only did we see the emergence of a strong Japanese shipbuilding industrial policy--organized by the Ministry of Transport and the Ministry of International Trade and Industry--we also began seeing the inventive financial techniques used by the Government and industry to undercut world pricing levels.

At that time, the Government authorized the shipbuilding industry to become the only authorized importer of sugar. With this monopoly in hand, Japanese shipbuilders were able to invest the profits generated by the higher domestic prices charged for sugar over the world price levels. This program no longer exists.

Throughout the 1970s, the Japanese continued to dominate the world market. Although all shipyards suffered in the period following the oil crisis of 1973-1974, the Japanese were able to maintain market shares of about 40 percent of tonnage delivered.

The late 1970s represented the beginning of a severe depression in the world market. Orders for new ships, particularly tankers, began to fall following the oil crisis. In fact, since 1980, only five percent of the world's tanker fleet has seen its ships replaced by new tonnage.

Complicating the growing lack of work was the emergence of South Korea as a dominant shipbuilder in the 1980s. The Koreans took note of the utility that developing shipbuilding capability gave to the overall industrial economy of Japan. In the mid-1970s, the Korean Government decided that public sector investment should be targeted to shipbuilding. The strategy has worked. With Korean Government support, Korean shipbuilders saw their market share, in deadweight tonnage, grow from .4 percent in 1968 to 2.8 percent in 1978 to 28.6 percent in 1989.

Admittedly, the gravitation of shipbuilding capability and capacity had come at the expense of the Europeans and the Americans. European shipyards had recovered from the ravages of World War II by the late 1950s and 1960s only to face a significant threat from Japan. In 1968, the Europeans held about 55 percent of market share in deadweight tonnage, which they were able to maintain through the 1970s. As the depression of the 1980s settled in, the European share of the market dropped to 40 percent.

To combat the Asian shipbuilding capability, the Europeans began in the late 1970s and 1980s to aggressively increase their utilization of subsidies to match Korean and Japanese pricing. How severe was the shipbuilding depression? By 1989, worldwide production had dropped to 16 million deadweight tons. In 1973, the world produced 105 million deadweight tons. Thus, the depression of the 1980s culminated in a market that was producing only 15 percent of its pre-depression peak.

In order to obtain whatever new building contracts were available, many shipyards cut their prices dramatically. By 1985, the average price of a 280,000 deadweight ton very large crude oil carrier (VLCC) was about \$40 million. This was the same price being charged for VLCCs in 1970, despite inflationary growth of 172 percent in the period 1970-1985.

European governments watched these developments with dismay, but they were not about to completely shut down their shipbuilding capability. It is true that many governments were only willing to increase their subsidy levels if shipyard capacity were reduced to meet expected demand. However, according to Dr. Martin Stopford, a shipping economist based in London, this effort was complicated by the following three factors:

- "1) Political Expediency. Many of the yards were in towns that depended heavily on shipbuilding for employment, and politicians were prepared to provide subsidies which enabled their local shipbuilders to avoid the massive capacity cuts which would have solved the problem quickly and cleanly. In Japan, there was the additional problem of the lifetime employment system which ruled out redundancy as a means of reducing capacity.
- "2) South Korean Expansion. In 1972, South Korea had started developing a major shipbuilding industry. Just as European and Japanese shipbuilders were starting to cut their capacity, Hyundai, the first of the new Korean yards, came into production. The timing of the Korean entry into the market could not have been worse and their new capacity offset the capacity cuts in the traditional shipbuilding areas, especially Western Europe.
- "3) Failure to Anticipate the Severity of the Crisis. Since the scale of the problem was not fully appreciated at the outset, instead of tackling the capacity reduction with a single clean cut, most shipbuilders tackled restructuring as a series of steps down, interspersed with periods of consolidation, during which each shipyard sought to maintain its market share at the expense of others by means of price cutting backed by subsidy."

Meanwhile, in the United States, our response to the worldwide struggle for market share was to see the U.S. Government terminate the Construction-Differential Subsidy. While it is true that our commercial orders in the 1970s were targeted solely to the domestic market, it is also true that this market had allowed us to maintain a healthy mix of commercial and naval contracts. In fact, we were producing nine percent of total commercial shipbuilding in the world as compared to less than 0.1 percent today.

But, the Government's response was totally counter-productive. Just when subsidies began to grow, our subsidies were terminated. Two other countries (Sweden and Canada) reduced their subsidy programs (although they were not terminated completely). The result in all three countries was the same: decline or collapse of their commercial shipbuilding capability.

For American shipyards, the period of the 1980s was marked by growth in the naval market. So, while there were concerns about the lack of commercial shipbuilding, for many in Government, the number of naval contracts minimized the impact of subsidy termination. However, two and one-half years ago, the Shipbuilders Council of America made it clear to its members that a downturn in defense spending was approaching--a downturn generated by the changing international threat environment. For an industry almost totally dependent on the U.S. Government for its work, such a structural budgetary change could be catastrophic. To survive, we had to turn to the commercial market.

Starting in 1988, the world shipbuilding market was finally beginning to revive after a period of massive depression. The world fleet was aging, there were concerns about the safe operation of ships in the ocean environment, and there were technological improvements in ship systems performance (including propulsion plants) that would improve the quality of ocean shipping services. Thus, it was possible to foresee that the 1990s could be a period of profound growth in shipbuilding demand. Aiding the process was the fact that worldwide capacity had declined. World shipbuilding capacity had dropped by about 40 percent (the same as in the United States). In 1990, demand began to accelerate, with worldwide production 25 percent higher than in 1989. While forecasters were in continuous debate about the extent of this demand growth, even conservative estimates show that it will reach a peak of nearly 60 million deadweight tons by the end of the decade, or more than three times current levels.

Despite this growth demand, American shipyards will not have an opportunity to capture a share of this market if foreign governments continue to rely on subsidies to underwrite ship prices. Subsidy programs are of great importance to foreign shipbuilders since there is a strong

correlation between levels of subsidy support and the size of the orderbook.

For example, in Japan, at the end of 1990, the orderbook stood at 558 ships totaling 29.9 million deadweight tons. This workload supported a 41 percent market share for Japan in tonnage and a 29 percent share in ship numbers. This backlog results not only from Japanese shipyard performance, but also from the \$4.4 billion in subsidy support provided by the Government in the period 1987 through 1990.

In Korea, government support programs totaled nearly \$2.2 billion in 1989 through 1990, while the German Government provided over \$5 billion in subsidy support in the 1987 through 1990 time frame.

By comparison, during the period 1987 through 1990, the United States Government provided \$4.6 million, which constituted their contribution to a joint government-industry partnership in the National Shipbuilding Research Program (NSRP). This might explain why there are only three commercial ships under construction today in the U.S.

Recognizing that subsidies are a major impediment to the reentry of American shipyards into the commercial marketplace, the Shipbuilders Council of America filed a 301 Petition against Japan, South Korea, Germany and Norway. We asked the U.S. Trade Representative to take unilateral action against these countries for their pervasive subsidy practices in an international shipbuilding market where American shipyards were essentially denied entry.

After six weeks of review, the USTR reached the conclusion that American shipyard plans to reenter the marketplace were being effectively denied. Ambassador Carla Hills requested that the industry withdraw its petition, and said that in exchange, the U.S. Government would initiate multi-lateral negotiations through Working Party Six on Shipbuilding within the Organization for Economic Cooperation and Development (OECD). After careful consideration of the Government's request, the industry reluctantly agreed to withdraw the petition. Ambassador Hills made a further commitment to set a deadline of March 31, 1990 for the achievement of an agreement in principle on a shipbuilding and repair subsidy discipline. Mrs. Hills made this commitment because the ambassadors from each of the countries targeted made a solemn vow that their governments were just as interested in subsidy discipline as the United States.

During the summer and fall of 1989, the U.S. Trade Representative's Office formed an inter-agency team to begin work on the shipbuilding negotiations. They moved aggressively to compile the data and strategy needed to make these negotiations a success. The U.S. shipbuilding industry has worked closely with the USTR throughout this process.

Initially, some progress was made. Each meeting saw improvements made to the text of the Agreement. The annexes defining which government support programs were to be covered and the phase-out schedule of existing programs was being discussed.

This all came to a halt in mid-1990 when the European Community brought the issue of dumping and unfair pricing of ships to the table. This complicated the negotiations and led to a slowdown in the process, because the Koreans and Japanese made it very clear that they did not want the proposed trade agreement to cover such issues.

Why had the Europeans brought the issue of unfair pricing to the table? The issue was brought up because the Japanese and the Koreans have had a consistent practice of underpricing their ships in order to drive out competition and secure market share. Recent statements by spokesmen for both industries have acknowledged the underpricing practices and have vowed that they will not be repeated.

But, the damage had been done both to the industry and to the negotiations. Two successive deadlines have been missed. And, we now stand 21 months later with the market continuing to evolve as the forecasters had predicted and continuing to deny American shipyards access.

As the subsidy talks have been going on, Japan, South Korea, and Germany have budgeted, disbursed, or proposed \$4.5 billion in new shipbuilding subsidies. Altogether, since

1987, these three countries have proposed or budgeted more than \$12 billion in commercial shipbuilding-related aid, of which over \$9 billion has been provided in cash, loans, guarantees, and other assistance. These subsidies have come in the form of direct grants, export credits, restructuring or investment aid, home credits, and research and development assistance. Thus, during the period of negotiation, our trading partners continue to subsidize. They have not promised to freeze their programs while discussions are underway.

The U.S. shipbuilding/repair industry stands at a crossroads. We have always supported the concept of a negotiated trade agreement disciplining subsidy practices. We have agreed that any statutory provision protecting American shipyards in the commercial market should be repealed to make our laws and regulations consistent with the Agreement, even though these provisions have amounted to very little. It is apparent to all sides that we gave our leverage away unilaterally in 1981 with the termination of our subsidy program.

The U.S. shipbuilding industry has always held that a good international agreement has to contain the following elements.

1. The penalties imposed under such an Agreement should be tough and meaningful. The Agreement should require repayment of the subsidy by the shipbuilding/repair company to its government. If that should fail, then the signatories should have the right to fine shipowners. This fine would apply to those who benefit from the subsidy practice, which is typical in most dumping or countervailing duty cases.
2. Since the Koreans and the Japanese have admitted that they engaged in non-compensatory pricing practices in the 1980s, the U.S. shipbuilding/repair industry agrees with the Europeans that an unfair pricing mechanism is needed.
3. The U.S. Government is the only OECD member that has clearly identified which programs would be covered under the Trade Agreement. No other government has provided such a list. Specific, as well as generic, programs must be identified in the annex that will cover the phase-out.
4. The Europeans are not in a hurry to phase-out their programs. The U.S. industry began the process urging a two-year phase-out based on a start date of December 1991. Obviously, that timetable will be missed. The EC has already introduced a Seventh Directive on Shipbuilding, which encompasses a three-year plan on state aids. The Europeans are *not* serious about a subsidy discipline, because they not only want a long phase-out of existing practices, but they are also interested in *not* capping spending on European state assistance. Without a strong, well articulated, and quick phase-out, the Europeans hope to continue to deny U.S. access to the world shipbuilding market.

After 21 months of negotiations, we still do not have a trade agreement that disciplines foreign shipbuilding subsidy practices. How much longer must we wait? Yet, when we ask the Administration to undertake unilateral action, they appear to be unwilling to use the trade instruments available to it. Despite the fact that we deeply appreciate the efforts undertaken by the USTR staff, we fear that the other side ultimately believes that the Administration will do nothing.

As a result, the U.S. shipbuilding/repair industry believes that our trading partners fear nothing but the political will of the American people as embodied in the U.S. Congress. We believe that now is the time to send a strong message to our trading partners that the days are over when the U.S. ignores its own economic interests while it maintains international security so that other economies flourish.

The U.S. shipbuilding/repair industry asks this Subcommittee and the Congress to consider the passage of legislation that will generate the results we are all looking for; that is, a fair chance for U.S. shipbuilding and repair yards to meet future market demand.

Such legislation will allow the U.S. Government to calculate the economic benefit of subsidy practices and to seek foreign government collection or repayment of the subsidy by the foreign shipyard. Failing repayment, it would allow the United States to fine or penalize those owners that accept delivery of a ship that is illegally subsidized.

We believe that, after more than 20 months of the OECD trade talks, our trading competitors have made it clear that they are unwilling to end their shipbuilding subsidies through these multi-lateral negotiations. They are unwilling to end their subsidies because they do not perceive such an action is in their best interests. The elimination of shipbuilding subsidies will only be achieved when the U.S. Congress provides them with an incentive to do so.

While we appreciate the USTR's efforts on behalf of our industry, we also have to say that the USTR's definition of "progress" in the talks is not the same as ours. The fact that our trading competitors are willing to participate in meeting after meeting after meeting and have not refused yet another meeting does not represent sufficient progress to us. While these meetings go on ad infinitum, our industry continues to be locked out of the international market by foreign shipbuilding subsidies that are allowed to remain in place.

We have watched our industry lose 60,000 jobs to a foreign shipbuilding and repair industry that has been propped up and force-fed subsidies that have distorted and very nearly destroyed the international shipbuilding market. These subsidies have led to over-production, artificial depression of prices, and to severe imbalances between demand and supply.

Now that American yards face the downturn in defense spending, necessitated by the change in international events, we need to be given a chance to compete fairly in the world market. We are not asking for subsidies for ourselves; we are simply asking that our government support us in our efforts to open up the world market and lead to the export of ships that are built and repaired by Americans.

Chairman GIBBONS. I appreciate your very fine statement. And I want to repeat again that today is the day. No subsidies after today or we are going to take unilateral action against the ship and the shipbuilding company and the government that provides them. Today is the cutoff day.

Now, we want the negotiations to go forward, but no subsidies may be paid after today, on any kind of ship that enters any port in the United States, ever.

Mr. STOCKER. We appreciate that strong statement of support, Mr. Chairman, and we agree with you completely.

Chairman GIBBONS. During this recess time that is coming up in Congress now, I hope that you will work closely with our staff here, making sure that the legislation that is proposed—it may be a series of bills—is totally effective. I can't think of anything I am more serious about than the cutting off of these subsidies. I have tried to cut off subsidies for producing goods ever since I have been in Congress. And, you know, we're making some progress, but there is just no reason why this subsidy sham should go on in the shipbuilding industry throughout the world.

Mr. PEASE.

Mr. PEASE. Thank you, Mr. Chairman.

Thank you, Mr. Stocker.

Just a couple of questions for you. Is Mr. Matsui right, are you folks afraid of the USTR?

Mr. STOCKER. Well, I—yes, yes, we are, Mr. Pease. I have noted that Ambassador Williams—I'm afraid of people from Oklahoma, that's part of the problem. Now, certainly I'm joking. We're not afraid of USTR.

We have felt, right from the very beginning, that our best interests were to be served by working closely with them. I think they were somewhat surprised to see our petition. I think after an initial period of some skepticism they now agree with us that the international shipbuilding markets is one of the markets, if not the market, that is most heavily distorted by subsidy practices.

I think there are other elements within the administration that perhaps don't have the same level of enthusiasm that USTR has in pursuing a solution to this particular problem. So while I have never doubted the resolve of the USTR, there is a question in my own mind how far negotiations will eventually get us?

If we can reach a negotiated settlement—and this is in response to the Chairman's comment—we fully back that. I mean our first aim has always been to try and reach a negotiated settlement. Thus far, that effort has failed, so we are asking Congress to give us some support to end these practices.

I think there is a limit on what good-faith discussion can, in fact, lead to.

Mr. PEASE. What's your deadline? You could file a 301 case any day. How long will your patience hold?

Mr. STOCKER. Our patience is very near to the breaking point if it has not already been broken. And we have, in fact, had a number of discussions internally about whether or not it would be appropriate for us to file a 301 again.

However, I should point out that despite the fact that there were good intentions in drafting section 301, we feel that there are some

limitations in it. We don't have the right, for example, to file a countervailing duty case, or dumping case of some kind, because ships are not covered under the U.S. trade law, since they are not considered an imported article. Section 301 was the only vehicle open to us.

We also are a little concerned that if we refiled the case now, we would be reentering an administrative process that could take us some time, and further delay is only going to keep us out of the market. We think part of the strategy the Europeans are pursuing is to keep us out of that market, for a period of time, because they see the up-tick in the market and they know that their wage rates and their lack of competitiveness, without those subsidies, is really severe. They know we are coming after their market share. So it is in their best interest, from their point of view, to keep us out of that marketplace.

If we were to go back through a 301 process, or file a case, even if this committee and the Congress, in its wisdom, decided to include ships under our countervailing mechanisms, or our dumping mechanisms, we think it would simply take too long to bring that issue to closure. We have already been at this for 2 years. My industry has had infinite patience, and frankly, the boys back in the yards are very concerned.

Mr. PEASE. Sure.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman.

First, I want to thank you for letting me participate. I was in another committee and we heard the good news about your announcement. I just wanted to come by and congratulate you for holding these hearings and your statement about ending subsidies, effective immediately.

I come from Baltimore, as you know, and I am old enough to remember what commercial shipbuilding can mean to a community. I hope I am young enough to be able to see commercial shipbuilding return to Baltimore.

I guess my question is, do we still have the technology and the ability to be competitive internationally, considering what has happened in commercial shipbuilding worldwide? Will we be able to transfer some of our capacity in military shipbuilding to the commercial side? Do you think that we will be able, once subsidies end, to once again compete in the international marketplace?

Mr. STOCKER. It will be done with some difficulty, Mr. Cardin. Clearly the kind of vessels that we build for the Navy are very complex, and they are very sophisticated. I can't conceive of a commercial owner that would be interested in putting a combat system on his container ship and having a series of shipyard workers who are skilled in integrating combat systems, doing that on a commercial-type vessel. That is a fundamental problem.

However, there are market niches that we can, in fact, go after. We think anything that involves a high degree of outfitting, anything that involves a ship that is complicated or sophisticated to build in the commercial market is the first type of vessel that we think that we can get back into.

That doesn't minimize the fact that we are going to have to go through an economic readjustment period. There is going to be some change in the way that we do business. We think that we have got the capability of doing that, if given the chance to do that. We think on things like LNG tankers, passenger ships, self-unloading bulkers, anything that is something other than just simply a simple—and I use the word advisedly, because they are not—anything beyond a simple tanker, we think we have got a reasonably good chance at.

One of the beneficial economic effects of what is occurring in the market right now—this issue I raised earlier about the rising demand in a market where there is relatively tight capacity or will be within the next 2 to 3 years—is that prices are going up. So there is no better time than right now to get rid of subsidies and get us back in the marketplace while prices are on the rise.

Mr. CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you.

Well, this concludes this hearing for today. I hope we won't have to come back to it any time soon. I hope that the negotiations will proceed and successfully conclude. But we are going to act. As of today, this is the cutoff of subsidy, for all ships built worldwide by anybody.

With that, we will conclude.

Thank you, very much for attending.

[Whereupon, at 11 a.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF PAUL J. BURNSKY, PRESIDENT, AMERICAN FEDERATION OF
LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, METAL TRADES
DEPARTMENT

My name is Paul Burnsky, and I am the President of the Metal Trades Department, AFL-CIO, which represents 21 national and international unions with a combined membership of 5 million workers. Shipbuilding and ship repair is one of the major industries in which our membership is substantially involved, both for the U.S. Navy and the private merchant marine industry. I want to thank you for permitting me the opportunity to submit this written statement for the record on foreign shipbuilding subsidies.

At the outset let me say that subject to a last minute effective international agreement to eliminate foreign shipbuilding subsidies, the Metal Trades Department of the AFL-CIO strongly supports the current bipartisan effort to enact legislation to eliminate these subsidies. It is our position that any international agreement on shipbuilding subsidies must contain a tight dispute settlement procedure, tough and effective sanctions for violators, and the immediate phase-out of government support.

After more than a year of intensive negotiations within the Organization for Economic and Cooperative Development (OECD), and after the passage with no agreement of three deadlines (the last being December 14, 1990), we believe that the chances for any such international shipbuilding subsidies agreement is highly unlikely. We, therefore, urge this committee to seriously consider legislation that will shortly be introduced by Mr. Gaydos (PA) and Mrs. Bentley (MD).

The Gaydos-Bentley bill seeks to eliminate foreign subsidies by requiring a foreign shipyard to repay to its government any subsidy received for the construction or repair of a ship delivered on or after the date of enactment. If a shipyard fails to repay the subsidy to its own government, a penalty in the amount of the subsidy will be levied on the ship before it can enter a U.S. port.

In 1981, the U.S. government unilaterally terminated subsidies to American shipyards. Foreign governments responded to our action by dramatically increasing subsidies to their shipyards. Consequently, U.S. firms lost their commercial business base and became almost totally dependent on Navy orders for their survival. As a result, over one-third of our yards capable of building a ship from keel up closed, and over 52,000 production workers were lost from the industry. If our remaining shipyards are to survive the downturn in Navy orders, it is essential that they recapture a share of the commercial market.

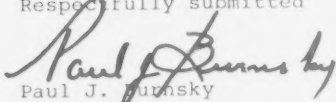
In June of 1989, the U.S. shipbuilding industry filed a Section 301 trade petition targeting the subsidy practices of Japan, South Korea, West Germany, and Norway. At the request of the U.S. Trade Representative (USTR), the industry withdrew its petition in order that her office could negotiate multilaterally with the member countries of the OECD. As previously indicated, three deadlines for reaching an agreement have passed without success. It is evident after 20 months of negotiations that our trading partners are unwilling to change their current business practices.

The Gaydos-Bentley legislation does not seek to reinstate subsidies for American shipbuilders. Rather, it would allow U.S. companies to compete in an international market free of all government intervention.

In conclusion, the Metal Trades Department believes that the time has long since passed for the Congress to take decisive action to restore some measure of economic health to the American shipbuilding industry and its workers. Our industry can become competitive internationally if everyone plays by the same rules and the playing field is level. To achieve this goal, however, requires the elimination of foreign shipbuilding subsidies either through multilateral negotiation or unilateral action on the part of the United States.

It is evident that our foreign competitors are not interested in achieving effective international agreement and, therefore, the Congress is left little choice but to move swiftly to enact the Gaydos-Bentley legislation.

Respectfully submitted


Paul J. Burns
President
Metal Trades Department
AFL-CIO

UNITED STATES GREAT LAKES SHIPPING ASSOCIATION

March 19, 1991

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IMMEDIATE PAST
PRESIDENT

WERNER BURCHARD
LAVINO SHIPPING

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways & Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 253

Dear Mr. Chairman:

I am writing on behalf of the members of the United States Great Lakes Shipping Association to express opposition to H. R. 253, the Shipbuilding & Repair Industry Trade Act of 1991. The Association, founded in 1956, consists of vessel operators and steamship agents engaged in the international Great Lakes trades. Members' vessels call at virtually all of the Lakes' major ports, as well as many of the system's secondary ports.

Almost 100 per cent of the ocean ships engaged in the international Great Lakes trades and calling at Great Lakes ports are foreign built and fly foreign flags. Indeed, many are state owned and have been constructed in state owned ship yards. These include vessels flying the Russian flag.

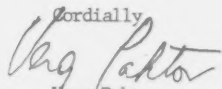
The Association has not taken a position on efforts by U. S. Trade Representative Carla Hills to end foreign ship construction and repair subsidies. However, we oppose the linkage between those efforts and H. R. 253 as a means to resolve the issue at hand.

We believe that H. R. 253 is flawed. It does not respond to the issue of how a ship built by a government will repay the same government for its construction or repair. When the vessel is built by a foreign government, who is supposed to repay the government? In the cases of vessels built with partial subsidies, we seriously doubt that the United States government will be able to obtain data needed from foreign governments and foreign corporations so that a determination of "net" subsidies to be repaid can be made.

The Bill is also inequitable as its provisions are meant to be retroactive to two years prior to its enactment. Even if the Bill was otherwise acceptable, it would be unfair to penalize vessel owners for having built or repaired ships with subsidies in the past.

Finally, enactment of H. R. 253 will either result in vessel diversion when ships affected by this law begin to avoid the United States, or will result in higher costs passed on to shippers by the carriers involved. In the end, it will be American consumers who will pay more to import products and American manufacturers who will find their goods that much less competitive in world markets.

U. S. foreign policy can be better served through means other than H. R. 253. We encourage you and your committee's membership to table this legislation.

Sincerely,

Vera Paktor
Executive Director
United States Great
Lakes Association

VP/jr

MAR 26 1991

VERA PAKTOR
EXECUTIVE DIRECTOR
WARREN MARWEDL
GENERAL COUNSEL



COMMONWEALTH of VIRGINIA

Lawrence Douglas Wilder
Governor

Office of the Governor
Richmond 23219

March 19, 1991

The Honorable Sam M. Gibbons
Chairman of the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Gibbons:

The economic well-being of the maritime industry is vital to the Commonwealth of Virginia. There are over 25 shipbuilding and repair facilities in Virginia, nearly half of which have the capability of producing and /or repairing major commercial ships. However, no Virginia shipyard has built a major commercial vessel since 1979 when Newport News Shipbuilding completed construction of the U.S.T. PACIFIC, an ultra-large crude carrier. In fact, as you know, the United States accounted for only 1 of the 1900 commercial ships on order or under construction worldwide as of last year.

The maritime industry has been very important to Virginia's economy since the early 1600s. Small shipyards lined the Elizabeth River as early as the 1630s. Over the past decade, Virginia has employed more shipyard production and nonproduction workers than any other state. Virginia is the leading shipbuilding state in the nation. We house the largest and most capable shipyard in the Western Hemisphere, and we are the only state in the nation, indeed in the world, that can construct large nuclear aircraft carriers.

Unfortunately, virtually all the tonnage of vessels constructed in Virginia over the past decade have been military vessels. Because of unfair government subsidies to foreign shipyards, our shipyards with the facilities and expertise to build the best ships in the world are rendered non-competitive in the commercial market. As a result, our shipyards, like those of our sister states, have suffered from this lost opportunity.

The Honorable Sam M. Gibbons
March 19, 1991
Page Two

The ability to compete in the commercial market is especially important as we face defense cuts and the decline in federal contracts for Navy ship programs. If we are to enjoy the economic fruits of a new world order, we must now be about the task of converting our military construction capabilities to civilian uses. Our ability to compete internationally for major commercial construction is vital to this conversion.

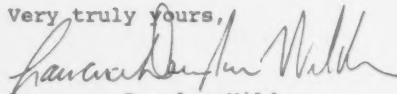
Currently, 46,500 persons are employed by Virginia's public and private shipbuilding and repair facilities. Our shipyards and their supplier and vendor base account for 20% of the 600,000 civilian jobs in the Hampton Roads area. In addition, nearly half of all shipyard employees in the United States were employed in Virginia as of 1988.

If we are unable to compete, falling victim to unfair competition, the financial impact on our state and national economy will be considerable. If we continue to face the unfair competition, more of our companies will go out of business. Perhaps even more damaging than the economic loss will be the loss of adequate facilities in the future should we be called upon once again to quickly enlarge our Navy in defense of our freedom.

As this issue of unfair foreign subsidies comes before you, I hope and request that your committee, Congress and the Administration will exercise maximum effort to level the playing field in this competition and permit our outstanding shipyards to fairly compete to construct major commercial ships once again.

With best wishes, I am

Very truly yours,



Lawrence Douglas Wilder

LDW/edv

STATEMENT BY
 ERNEST J. CORRADO, PRESIDENT
 AMERICAN INSTITUTE OF MERCHANT SHIPPING

SUBMITTED TO THE
 TRADE SUBCOMMITTEE
 OF THE
 HOUSE WAYS AND MEANS COMMITTEE

MARCH 21, 1991

The American Institute of Merchant Shipping (AIMS) is a national trade association representing 24 U.S.-flag carriers which own or operate approximately eleven million deadweight tons of tankers, dry bulk carriers, containerships, and other oceangoing vessels engaged in the domestic and international trades of the United States.

This statement concerns the 50 percent ad valorem duty imposed on the cost of equipment and repairs made on United States documented vessels in foreign countries ("repair duty"). Tariff Act of 1930, sec. 466, 46 Stat. 719, codified as 19 U.S.C. 1466. The duty is listed as Special Statistical Reporting Number 9999.00.10 of the United States Harmonized Tariff Schedule.

This repair duty unduly burdens and restricts U.S. foreign trade. Elimination of the repair duty would provide a substantial economic benefit to U.S.-flag carriers. In addition, economic benefits to U.S. carriers ultimately will benefit the public. Furthermore, elimination of the repair duty would have little economic impact on U.S. ship repair facilities. Moreover, the statute's penalty provisions which are implemented by CFR 4.14(g) also cause an economic hardship for U.S.-flag vessel owners/operators. The number of penalties issued by customs to U.S.-flag vessels in the last four years has increased dramatically, especially in situations in which supporting documentation for the entry was omitted or filed late, however unintentionally. The repair duty could serve as an important negotiating tool in ongoing international trade deliberations.

Attached is a brief that sets forth the history of amendments and judicial interpretations of the repair duty statute. The history shows that the intent of the statute was to encourage U.S. shipowners to employ domestic shipyard labor, and not to provide blanket protection for domestic repair yards. The history also shows the complexity of the law which results in a greater burden on trade.

The ship repair duty as it stands today does serve as an important negotiating tool in overall talks on shipbuilding and ship repair subsidies. The U.S. Trade Representative, at the request of the Shipbuilders Council of America, recently agreed to seek the reduction or elimination of foreign shipbuilding and ship repair subsidies. In exchange for the elimination of these subsidies, the United States should offer to eliminate its own protectionist ship repair duty. Foreign governments would welcome the removal of this substantial U.S. barrier to their competitive industries. Thus, the best economic interests of the United States would be served by negotiating the elimination of the duty rather than heaping more restrictions on domestic carriers. The United States, as a matter of policy, has negotiated the elimination of the repair duty in prior trade agreements. Elimination of the duty, rather than the proposed expansion of restrictions, would provide a significant economic benefit to U.S.-flag carriers.

Our statement and the attached brief point out the negotiating authority that Congress has provided the President with respect to the repair duty in the context of the GATT Uruguay Round. We note that the repair duty has already been eliminated in three international trade agreements. The agreements include the U.S.-Canada Free Trade Agreement, the U.S.-Israel Free Trade Agreement, and, with respect to aircraft repairs, the Tokyo Round of GATT. Accordingly, elimination of the repair duty in international trade agreements is established U.S. Policy.

This statement addresses the probable economic effect of eliminating the repair duty on the United States Government, U.S. carriers, and domestic repair facilities. The United States-flag commercial fleet has declined alarmingly over the past two decades. Today, U.S.-flag ships carry less than four percent of our foreign oceanborne commerce. Despite the depressed state of the carrier segment of the maritime industry, the U.S. continues to impose a 50 percent duty on foreign repair and equipment. The duty increases U.S. shipowners' costs and limits their flexibility, thus contributing to the decline of the U.S.-flag fleet.

First, the best economic interest of the United States would be served by negotiating the elimination of the repair duty. Elimination of the repair duty will likely result in a loss of under \$50 million over five years to the U.S. Treasury, which is considered de minimus. More importantly, the President can use the repair duty as a valuable negotiating tool in the

GATT Uruguay Round. Just as significant benefits were gained by domestic aircraft and aerospace industries partly in exchange for eliminating the repair duty on aircraft during the Tokyo Round, comparable benefits can be achieved in exchange for the vessel repair duty in the Uruguay Round.

Second, elimination of the repair duty would produce a significant economic benefit to U.S. carriers. U.S.-flag carriers purchase equipment and effect repairs overseas for several reasons. The primary consideration is the vessel's location when repairs are required. Other considerations include: the availability of ship repair yards, the cost of the work, the quality of the work, and the time required to complete the work. These factors, despite the repair duty, dictate that some ship repair work be done overseas.

The primary economic benefit to U.S.-flag carriers from the elimination of the repair duty would be its dollar value. Between 1984 and 1989 U.S. carriers paid an average of over \$9 million per year in duties. In 1988 alone, U.S. carriers paid \$14.5 million in repair duties. Additionally, in considering the duty's economic effect on carriers, one must recognize that the duty substantially limits a ship's operating flexibility. The limitation in operating flexibility has the economic effect of raising the operating costs of U.S. carriers vis-a-vis foreign carriers which are not subject to such duties. Furthermore, the dollar amount and limitations on flexibility ultimately increases costs for consumers, including the U.S. government, which ships its goods on U.S.-flag vessels. Beyond these costs, appeals to Customs over which items are dutiable and nondutiable, along with any subsequent litigation, has a substantial economic impact on carriers. Hence, even though a dollar amount cannot be placed on these latter figures, it is clear that elimination of the repair duty would provide a significant economic benefit to U.S. carriers.

Third, elimination of the repair duty would have little economic impact on domestic repair yards because military contracts account for a substantial majority of repair yard work. In 1987, U.S. Navy contracts accounted for over 84 percent of the total dollar value of domestic ship repair work. In fact, in 1987 alone the U.S. Navy spent over \$1.5 billion in domestic repair yards. By comparison, in 1987 both U.S. and foreign vessels spent \$261 million in domestic repair yards with the U.S.-flag share accounting for less than 10 percent of the total value of domestic repair work. Even so, elimination of the duty would not likely result in a substantial shift of the 10 percent U.S.-flag commercial work in foreign yards.

Since 1970, the U.S. shipbuilding and ship repair industries have significantly increased their capacity, capability and productivity. At the same time, foreign repair prices have increased because of a growing world demand for ship repair facilities and the devaluation of the U.S. dollar. Consequently, the gap between foreign and domestic ship repair costs is narrowing regardless of the duty.

Furthermore, as previously noted, the primary consideration of repair location is the positioning of the vessel rather than the amount of duties. Moving a ship overseas solely to obtain repairs is extremely expensive and adds to the total cost of the work. To illustrate, a recent AIMS survey of eleven U.S.-flag carriers indicated that U.S. shipowners effect approximately 70 percent of their total repair yard work domestically even though less than 60 percent of the total value of foreign work is generally dutiable under the statute. Moreover, in 1987, foreign-flag vessels, which are not subject to the repair duty, accounted for over 30 percent of the total commercial work in U.S. repair yards. Therefore, elimination of the repair duty will not result in a substantial shift of ship repair work to foreign yards and will have little economic effect on domestic repair facilities.

The federal statute imposing a 50 percent ad valorem duty on the cost of foreign ship repairs has been subjected to numerous revisions since its inception. Most of the revisions have limited the scope of dutiable work. The terms in the statute also have been subjected to frequent judicial interpretations which have further narrowed the scope of dutiable work. The statutory language and revisions narrowing the scope of the duty clearly express a Congressional intent to assist, but not to provide blanket protection for the domestic repair industry. In summary, the repair duty is embodied in a complex law, which is expensive to comply with and expensive to administer, that burdens foreign commerce. The attached brief is a legal analysis of the background, administrative and judicial interpretation of the statute and an argument for the elimination of the repair duty in international agreements.

We appreciate this opportunity to comment on the 50 percent ad valorem duty. This statement and attached brief are submitted for the record.

ATTACHMENT TO
STATEMENT BY
ERNEST J. CORRADO, PRESIDENT
AMERICAN INSTITUTE OF MERCHANT SHIPPING
SUBMITTED TO THE HOUSE WAYS AND MEANS
COMMITTEE
TRADE SUBCOMMITTEE
MARCH 21, 1991

I. BACKGROUND OF THE TARIFF ACT OF 1930

The predecessor of the modern statute was enacted by Congress in 1866. Act of July 18, 1866, Ch 24, sec. 23, 14 Stat. 183. The Act imposed a 50 percent *ad valorem* duty on the cost of foreign repairs to United States vessels documented to engage in the foreign or coastwise trade on the Northern, Northeastern, and Northwestern frontiers. *Id.* As a practical matter, the duty applied to U.S. vessels trading from the Great Lakes, the Atlantic, and the Pacific Coasts with Canada. The statute also provided for remission or refund of the duty where a shipowner established by sufficient evidence that the vessel had been compelled to seek foreign repairs due to a weather related casualty or other emergency. *Id.*

Congress codified the statute in sections 3114 and 3115 of the Revised Statutes of the United States in 1874. R.S. 3114, 3115 (1874). The statute remained essentially unchanged until 1922 when Congress extended the trade areas subject to repair duty to include all vessels of the United States documented to engage in the foreign or coastwise trade, or intended to be so employed, anywhere in the world. Tariff Act of 1922, sec. 466.

Congress again made substantial changes to sections 3114 and 3115 of the Revised Statutes as part of the Tariff Act of 1930. First, Congress excluded from the repair duty any compensation paid to members of the regular crew of a vessel in a foreign country in connection with performing repairs or installing equipment, even if the repairs or equipment were dutiable. Tariff Act of 1930, sec. 466, 19 U.S.C. 1466(a). Second, Congress provided duty remission for repairs and equipment to secure the safety and seaworthiness of the vessel. *Id.*, 19 U.S.C. 1466(d)(1) (1982). Seaworthiness generally is defined as the practical ability to engage in the service for which the vessel is intended to engage. Lastly, Congress provided duty remission for the installation abroad by U.S. residents or members of the regular crew of equipment, repair parts, or materials manufactured or produced in the United States, regardless of the purpose of the repair or installation. *Id.*, 19 U.S.C. 1466(d)(2) (1982).

In 1971, Congress amended section 466 of the Tariff Act of 1930 to incorporate the repair duty provisions of the Revised Statutes into title 19, section 1466 of the U.S. Code, and repealed sections 3114 and 3115 of the Revised Statutes. Act of January 5, 1971, Pub. L. 91-654, 84 Stat. 1944, 19 U.S.C. 1466 (1982). The Act also provided for several additional exceptions to the repair duty. First, the duty was excepted for labor, materials, parts, or equipment used for cargo dunnage, packing, and shoring, or for the erection of temporary bulkheads for the control of bulk cargo, or for the preparation of tanks for the carriage of liquid cargo. *Id.*, 19 U.S.C. 1466(d)(3). Second, the duty was excepted for repairs to and equipment for non-cargo vessels (i.e. vessels used primarily for purposes other than transporting passengers or property in the foreign or coasting trade; e.g., fishing vessels) remaining continuously outside the U.S. for a period of two years. However, the duty specifically was maintained for (1) repairs made and equipment purchased during the first six months after departing the United States, and (2) fish nets and netting. *Id.*, 19 U.S.C. 1466(e).

Since 1971, Congress has made a number of minor modifications to the repair duty statute. Congress amended the repair duty statute by the Act of October 3, 1978, Pub. L. 95-410, 92 Stat. 900, (making minor changes to the seizure and forfeiture penalty provisions); the Act of July 26, 1979, Pub. L. 96-39, title VI, sec. 601(a)(3), 93 Stat. 268, codified as 19 U.S.C. 1466(f), as amended by the Act of October 17, 1980, Pub. L. 96-467, 94 Stat. 2225 (exempting United States civil aircraft from the repair duty); and, the Act of December 28, 1980, Pub. L. 96-609, title I, sec. 115(a), 94 Stat. 3558, codified as 19 U.S.C. 1466(f) (exempting entries relating to tuna purse seine nets between October 1, 1979 and January 1, 1982).

The last significant change to the statute occurred in 1984 when Congress extended to all vessels, regardless of the character of their service, the exemption from the duty previously offered only to non-cargo vessels by the 1971 amendment. Act of October 30, 1984, Pub. L. 98-573, title II, sec. 208, 98 Stat. 2976 19 U.S.C. 1466(e) (1982, Supp. IV). However, the duty remained applicable where a passenger or cargo vessel departed the U.S. solely for the purpose of obtaining equipment or repairs abroad. *Id.*

II. ADMINISTRATIVE AND JUDICIAL INTERPRETATION OF THE STATUTE

The modern statute imposes the 50 percent *ad valorem* duty on "[t]he equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States...." Determining which items of overseas work are dutiable requires a review of Customs regulations and judicial interpretations of the statute.

The U.S. Customs Service ("Customs") administers the repair duty statute, as amended, in accordance with the purpose of the statute, the statutory language, and the judicial interpretations of the language. Customs regulations implementing the repair duty statute are found at 19 C.F.R. 4.14. The regulations set forth detailed procedures for entry following foreign repairs, procedures for remission or refund of the duty, and procedures for liquidation of vessel repair entries. Also, the regulations provide guidance as to items subject to duty.

Congress' intent in enacting the repair duty statute, as stated by the courts, was to equalize the cost of repairs performed by foreign, as opposed to domestic labor, to encourage U.S. shipowners to employ domestic shipyard labor whenever possible. See Mount Washington Tanker Co. v. United States, 665 F.2d 340 (C.C.P.A. 1981); Suwannee Steamship Co. v. United States, 435 F. Supp. 389 (Cust. Ct. 1977). Similarly, the history of amendments to the statute and longstanding judicial interpretation of the statute's terms clearly show that the repair duty was never intended to provide blanket protection for domestic repair facilities. Yet, part of the burdensome nature of the statute results from distinguishing dutiable from non-dutiable work, i.e., what constitutes "equipment" and "repair". This requires a review of court interpretations of the statute.

The first issue that must be examined is whether work effected in a foreign yard constitutes a "repair" within the meaning of the statute. The courts have generally defined ship repair as the restoration of a vessel or its equipment to its original state after decay, waste, partial destruction, or injury. See United States v. Admiral Oriental Line, 18 C.C.P.A. 137, 41 (1930); American Viking Corp. v. United States, 150 F. Supp. 746 (Cust. Ct. 1956). In applying this definition, a court in an early case found that expenses associated with repairs are outside the definition and thus classified non-dutiable. United States v. George Hall Coal Co., 134 F. 1003 (C.C.D.N.Y. 1905). The court held that the expense of docking a vessel to undertake repairs, along with associated docking expenses, are not dutiable "repairs." *Id.* at 1006. As a result, the docking rule today is applied to additional associated expenses, which are inseparable from modern drydocking, including drydock block arrangement, sea water supply, air supply, hose connection and disconnection, firewatch services, crane services for drydock operations, and drydock cleaning.

Similarly, courts have ruled that the examination of a vessel's apparatus and machinery to determine whether repairs are necessary is not a dutiable "repair" so long as the inspection does not result in repairs being performed. American Viking Corp., 150 F. Supp. at 754. Accordingly, annual and periodic inspections and surveys required by the U.S. Coast Guard and classification societies are not generally subject to the repair duty.

Lastly, outside the definition of dutiable "repairs" are costs incurred for travel expenses for repairmen, Mount Washington Tanker Co. v. United States, 505 F. Supp. 209, 16 (Ct. Int'l Trade 1980), and crating and shipping charges for repair materials. American Viking Corp., 150 F. Supp. at 752.

The second issue that must be examined is whether the foreign work can be classified as "equipment" within the meaning of the statute. Vessel "equipment" is generally defined as "any portable thing that is used for, or provided in, preparing a vessel whose hull is already finished for service." Otte v. United States, 7 C.C.P.A. 166 (1916) (holding trawl nets were dutiable equipment). In Otte, the court noted that the language of the statute indicated a Congressional intent to distinguish between "equipment" and the vessel itself including its hull and fittings. *Id.* at 168. Consequently, the rule evolved that dutiable "equipment" does not include work involving the installation, in some permanent fashion, of an article which is likely to remain on board if the vessel is laid up for a long period. See Admiral Oriental Line, 18 C.C.P.A. at 39 (holding that the installation of a steel swimming tank was not dutiable "equipment").

Clearly, shipowners face a burdensome legal morass in dealing with the repair duty statute and regulations. At the same time, the statute was not intended to nor does it afford a great deal of protection to domestic repair yards. Because the duty burdens and restricts foreign trade while providing little benefit, we recommend its elimination, and oppose any expansion of these restrictions.

III. ELIMINATION OF THE REPAIR DUTY IN INTERNATIONAL AGREEMENTS AS ESTABLISHED UNITED STATES POLICY

The 50 percent ad valorem duty on foreign repairs has been eliminated in the context of three major international trade agreements, including one multilateral in scope. In each of the trade agreements the repair duty was eliminated because it unduly burdened and restricted the foreign trade of the United States. Thus, the elimination of, rather than the expansion of, the repair duty in the context of international trade agreements is established U.S. policy.

The precedent cases for elimination of the repair duty are as follows. First, the duty was eliminated for the cost of repairs and equipment on U.S. civil aircraft in all foreign countries in 1979 as part of the Tokyo Round of GATT. The agreement for aircraft was implemented by section 601(a)(3) of the Trade Agreements Act of 1979, Pub. L. 99-39, 93 Stat. 268, 19 U.S.C. 1466(f) (1982). Second, the repair duty on U.S. documented vessels was eliminated with respect to Israel in 1985 as part of the U.S.-Israel Free Trade Agreement. See United States-Israel Free Trade Agreement Implementation Act of 1985, section 4(a), Pub. L. 99-47, 99 Stat. 82; as implemented by Presidential Proclamation 5924 of December 21, 1988, 53 Fed. Reg. 51,725. Lastly, the repair duty will be eliminated with respect to Canada over a ten year period as a result of the U.S.-Canada Free Trade Agreement. See United States-Canada Free Trade Agreement Implementation Act of 1988, Pub. L. 100-449, 102 Stat. 1851; as implemented by Presidential Proclamation 5923 of December 14, 1988, 53 Fed. Reg. 50,639. Accordingly, the precedents are well established for a finding of unduly burdening and restricting foreign trade and for complete elimination of the repair duty through international trade agreements.

The ship repair duty as it stands today does serve as an important negotiating tool in overall talks on shipbuilding and ship repair subsidies. The U.S. Trade Representative, at the request of the Shipbuilders Council of America, recently agreed to seek the reduction or elimination of foreign shipbuilding and ship repair subsidies. In exchange for the elimination of these subsidies, the United States should offer to eliminate its own protectionist ship repair duty. Foreign governments would welcome the removal of this substantial U.S. barrier to their competitive industries. Thus, the best economic interests of the United States would be served by negotiating the elimination of the duty rather than heaping more restrictions upon domestic carriers. The United States, as a matter of policy, has negotiated the elimination of the repair duty in prior trade agreements. Elimination of the duty, rather than the proposed expansion of restrictions, would provide a significant economic benefit to U.S.-flag carriers.

new orleans steamship association

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504-522-9592, FAX 504-523-2140

March 15, 1991

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

RE: H.R. 253

The New Orleans Steamship Association is the steamship industry's trade association on the Lower Mississippi River. We represent 61 owners, operators, agents, stevedores and thousands of vessels operating in the ports of Plaquemines, New Orleans, South Louisiana and Baton Rouge. The Association, on behalf of its members, opposes H.R. 253. The bill threatens to disrupt the movement of some 370,000,000 tons of foreign and domestic waterborne trade these ports handle each year and adversely impact the economies of the American hinterland which our ports serve. We take no position on the equities for and against foreign shipbuilding subsidies. We do strongly oppose H.R. 253 as a vehicle for implementing a policy which opposes such subsidies.

H.R. 253 imposes a punitive tax on ships built in subsidized foreign shipyards. Obviously, the tax is intended to be so onerous as to cause foreign governments to cease subsidizing shipbuilding in their country. We doubt if it will have the intended effect. We expect the foreign countries involved, both their government and their people, will resent the United States instructing them how to run their countries, just as we would resent them giving such instructions to us. H.R. 253 thus contains the fatal defect of all protectionist legislation. It raises the possibility of other countries enacting similar legislation. What would happen to world trade if many countries required ships to pay the "net subsidy" due on the vessel in each country it called?

We submit that the Department of Commerce probably cannot comply with the requirements of the bill. The bill obliges the U.S. government to minutely examine the business transactions of foreign governments and foreign corporations. The basic data for making the required determinations may not be available to our government at all, or, at least, it will be an awesome task to accumulate this data.

The bill is inequitable because it reaches back two years prior to its enactment and affects vessels constructed or repaired within that two-year time period.

The bill affects ships of all registry, including U.S. flag vessels. While, in toto, it may affect foreign flag operators more than U.S. flag operators, that is little comfort to U.S. flag companies already struggling to maintain their viability.

Finally, and perhaps most importantly, H.R. 253, like all protectionist legislation, penalizes the majority of Americans to benefit a select few. If H.R. 253 passes, one of two things will happen. Ships subject to the punitive tax will either continue calling the U.S. or they will not. If they continue calling, the cost of the tax will be passed on in higher freight charges.

The Honorable Sam M. Gibbons
Page -2-
March 15, 1991

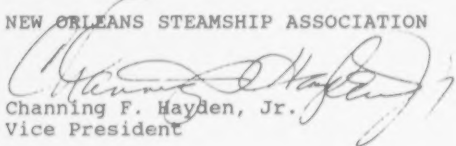
American consumers will pay more for import goods, and American exporters will find their goods less competitive on world markets.

If penalized ships refuse to call U.S. ports, our foreign trade will be served by the older, more inefficient ships in the world fleet. Again, higher transportation costs will be borne by American consumers and companies. In addition, under this scenario, H.R. 253 is likely to penalize only American ships.

If U.S. foreign policy requires the issue of foreign shipbuilding subsidies be pursued, we urge Congress to do it through diplomacy and other means that will not have a disastrous impact on this country's foreign trade.

Very truly yours,

NEW ORLEANS STEAMSHIP ASSOCIATION



Channing F. Hayden, Jr.
Vice President

CFHjr/cmc

cc: Louisiana's Congressional Delegation

Statement of L. B. Gatewood
President and Chief Operating Officer
Trunkline LNG Company
LACHMAR Partnership

on

FOREIGN SHIPBUILDING SUBSIDIES

INTRODUCTION

Since the mid-nineteenth century the United States has imposed a 50% duty on repairs made to U.S. flag vessels in foreign shipyards. The statute, 19 U.S.C. Section 1466, was enacted to protect and promote U.S. shipyards. The situation has changed dramatically since the statute was first passed. It is now sometimes impossible to obtain certain ship repairs in U.S. shipyards, particularly on large, specialized vessels. Therefore, this once effective statute can now actually restrict the competitiveness of U.S. shipping because it lacks a provision to exempt the duty when there is no opportunity to obtain the repairs in the U.S.

BACKGROUND

Panhandle Eastern Corporation, through its wholly-owned partnership, LACHMAR, owns two liquefied natural gas (LNG) vessels. During 1987, Panhandle Eastern and Sonatrach, the Algerian national oil and gas company, agreed to a new market-sensitive contract to restart LNG imports to Panhandle's Trunkline LNG Company's LNG facility in Lake Charles, Louisiana.

Associated with the reactivation of the import project, LACHMAR's two LNG vessels had to be recommissioned after having been laid up for six years. The vessels required extensive drydocking, maintenance and inspection to bring them up to first class condition and to renew the necessary U.S. regulatory certificates. The vessels are 936 feet in length and 144 feet in beam and thus require a very large drydock.

LACHMAR conducted an extensive search of the U.S. and European shipyards capable of handling vessels of our size and technical complexity. There were four U.S. yards geographically suitable and physically capable of drydocking our vessels. Those four yards and seven European yards were selected, and bid packages were sent to each yard.

Of the four U.S. yards asked to bid, the two yards that have built LNG ships declined to bid due to their respective workloads. The two other U.S. yards submitted incomplete bids and indicated they were so busy that they could not meet our time schedule. Therefore, despite diligent effort, Panhandle was unable to find a U.S. shipyard that could make the required repairs within a reasonable time frame. The vessels were subsequently recommissioned in Marseille, France, at a total cost of approximately \$5.0 million. As a result, Panhandle incurred a duty of approximately \$2.5 million despite its extensive efforts to obtain the repairs in the U.S. The vessels were recommissioned on schedule and entered service in time to supply the U.S. with badly needed fuel during the unusually cold December of 1989.

THE DILEMMA

The statute imposes a 50% duty on repairs and equipment placed upon U.S. flag vessels in foreign countries. The only exemptions to the statute are for emergency repairs and for vessels away from the U.S. for two or more years.

There is currently no provision in the statute to exempt duty when no qualified U.S. facilities are available. The inequity is exacerbated by the fact that all equipment purchased in the U.S., or taken from the vessel's inventory while in the foreign shipyard, is also subject to the 50% duty.

In Panhandle's case, rather than promoting U.S. shipyards, the statute only diminished the competitiveness of our U.S. flag vessels in international trade.

Furthermore, this is a continuing problem. Panhandle will be faced with additional duties each time the vessels require repairs, if no U.S. shipyard is available or capable of doing the work.

POSSIBLE SOLUTION

The present statute needs to be amended to allow for foreign repairs if no U.S. facilities are available. Also, a provision needs to be added to exempt from duties all U.S. purchased equipment and parts.

BEFORE THE
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

STATEMENT OF
UNITED SHIPOWNERS OF AMERICA
ON NEGOTIATIONS TO ELIMINATE
COMMERCIAL SHIPYARD SUBSIDIES

The United Shipowners of America (USA) is pleased to take this opportunity to present its views on the multilateral negotiations currently in progress under the auspices of the Organisation for Economic Co-operation and Development (OECD) to eliminate subsidies for commercial shipbuilding. The United Shipowners of America is a national trade association whose members own and operate most of the U.S.-flag liner vessels engaged in international trade. Our members are American President Lines, Ltd., Central Gulf Lines, Inc., Crowley Maritime Corporation, Farrell Lines, Inc., Sea-Land Service, Inc., and Waterman Steamship Corporation.

Over the last year and a half, the members of USA have followed with interest the international effort to eliminate subsidized commercial ship construction and repair. We have reviewed several of the working drafts of the OECD Agreement under negotiation and have met periodically with Ambassador S. Linn Williams, Deputy United States Trade Representative and head of the U.S. negotiating team, to discuss the progress of the talks. Although we have made it clear during these meetings that we support in concept the effort to terminate shipyard subsidies, we have made it equally clear that we strongly oppose any provision which would impose sanctions or penalties for violation of the Agreement against ships, ship buyers or shipowners. It would be extremely unfortunate if the provisions in the Agreement which would otherwise benefit the U.S. flag liner industry -- such as the elimination of the 50% ad valorem duty imposed on non-emergency foreign repairs to U.S. flag vessels and the repeal of numerous domestic build requirements -- were rendered meaningless by excessive and unnecessary penalties levied against ships and shipowners. Quite simply, USA believes that the problems of the U.S. shipbuilding industry should not be solved through imposition of burdensome penalties on shipowners. The responsibility for violation of the OECD Agreement should instead be squarely placed where it properly belongs -- on the foreign shipyards and countries subsidizing commercial shipyards.

Accordingly, USA noted with grave concern that several preliminary drafts of the OECD Agreement included provisions which would permit a dispute panel to penalize ships and shipowners for violations of the Agreement. For example, on page 9 of the Third Revised Draft of the Agreement dated November 15, 1990, the imposition of the following sanctions in the event of a violation of the Agreement is proposed:

"(d) Collection of a charge in the amount determined by the Panel and by levy against the ship involved;

(e) Not permitting government cargoes to be contracted by the ship involved until the amount determined by the Panel is paid."

Although these two provisions would plainly subject ships and shipowners to fines, seizures and other restrictions, they would not in any meaningful way deter offending shipyards and countries from a continuation of subsidized ship construction. In short, for the reasons set forth below, USA and its members cannot support, and strenuously object to, any such sanctions -- whether they appear in the OECD Agreement or in legislation subsequently introduced:

1. Such sanctions would needlessly disrupt the orderly movement of millions of tons of waterborne trade through U.S. ports and elsewhere.
2. Such sanctions would jeopardize the ability to finance the acquisition of vessels. Present financing methods have a bank or other lender as the shipowner.
3. Sanctions on ships and shipowners would not achieve the stated objective of the elimination of commercial shipyard subsidies. The only way to achieve this objective is to directly penalize the parties most responsible for the violation -- the foreign commercial shipyards and countries providing subsidies to those commercial shipyards.
4. Other, more appropriate remedies are available -- such as fines and levies against the offending shipyard, the removal of GATT concessions to the offending country, and imposition of tariffs against goods of the offending country.
5. The shipowner is often a citizen of a different country than the shipbuilder and is unaware of, not responsible for and not a party to the shipyard's subsidy practices. Indeed, the ownership of a vessel may change several times.

In our several meetings with Ambassador Williams, he assured the members of USA that -- in spite of the existence of the draft provisions cited above -- the U.S. government will not agree to the imposition of any penalties or sanctions against ships or shipowners. In fact, we have been advised that the proposed provisions containing such sanctions and penalties have been deleted from subsequent drafts of the Agreement. We were pleased that Ambassador Williams took the opportunity to reiterate publicly his opposition to such penalties in his testimony to this Subcommittee on March 21:

"Typically, for these sorts of agreements, it requires that a country eliminate prospectively the measure that is a violation of the agreement. Untypically, it also requires that any benefits received by a shipbuilder must be repaid. In this way, the sanction falls on the shipbuilder that is in violation of the agreement, not the shipowner, which is often from a different country and may be unaware of the builder's violation of the agreement. In our view, imposing the sanction on the builder is the strongest mechanism thus far negotiated in any international agreement." (emphasis supplied)

USA and its members firmly urge Ambassador Williams to maintain this position in all future negotiations. The issue of sanctions against ships and shipowners should not be open for further discussion or debate -- and should be an issue over which the United States is willing, if necessary, to terminate the negotiations.

In light of the testimony of the Shipbuilders Council of America (SCA) before this Subcommittee on March 21 and the imminent introduction of sanctions legislation in the Congress, USA and its members believe that it is particularly important for all concerned parties to understand our complete opposition to sanctions against shipowners as a means of eliminating commercial shipbuilding subsidies. We cannot agree therefore with the testimony of John Stocker, President of SCA, that signatories to the OECD Agreement should have the "right to fine shipowners" who purchase subsidized foreign-built vessels. We will also vigorously object to any legislation which seeks to, in Mr. Stocker's words, "allow the United States to fine or penalize those owners that accept delivery" of subsidized foreign-built vessels. Such an approach would place another inappropriate burden on the already struggling liner shipping industry.

In closing, let us re-emphasize that although USA is generally supportive of the effort to eliminate commercial shipbuilding subsidies, we cannot support any international agreement or legislation that would impose sanctions or penalties against the U.S.-flag liner ship operators. All such measures should be directed at the source of the problem -- foreign shipyards and foreign countries subsidizing commercial ship construction.

March 28, 1991.